SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 209

RAILROAD TRANSFER SERVICE, INC.,
PETITIONER,

vs.

THE CITY OF CHICAGO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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[fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 15230

RAILROAD TRANSFER SERVICE, INC., a Delaware Corporation, Plaintiff-Appellant,

vs.

THE CITY OF CHICAGO, et al., Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable Bernard M. Decker, District Judge.

Appendix for Plaintiff-Appellant—Filed September 8, 1965

[File endorsement omitted]

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Docket No. 60-C-1509

In Chancery

RAILROAD TRANSFER SERVICE, INC., a Delaware Corporation, Plaintiff-Appellant,

vs.

THE CITY OF CHICAGO, a Municipal Corporation, RICHARD J. DALEY, not individually, but as Mayor of the City of Chicago; RAYMOND F. SIMON, not individually, but as Corporation Counsel of the City of Chicago; ORLANDO WILSON, not individually, but as Superintendent of Police of the City of Chicago; and JAMES CARTER, not individually, but as Public Vehicle License Commissioner of the City of Chicago, Defendants-Appellees.

PREFIX OF APPELLANT PURSUANT TO RULE 12(c)

1. This action was commenced by the filing of a complaint in Docket No. 60 C 1509 on September 23, 1960, in the United States District Court for the Northern District of Illinois, Eastern Division.

2. The original parties in Case No. 60 C 1509 were (a) Plaintiff—Railroad Transfer Service, Inc., a corporation; (b) Defendants—City of Chicago, a Municipal Corpora-
[fol. 2] tion; Richard J. Daley, not individually, but as Mayor of the City of Chicago; John C. Melaniphy, not individually, but as Corporation Counsel of the City of Chicago; Orlando Wilson, not individually, but as Superintendent of Police of the City of Chicago; and James

Carter, not individually, but as Public Vehicle License Commissioner of the City of Chicago.

3. The cause was originally assigned to Judge Michael Igoe. On September 22, 1961, it was re-assigned to the District Court's Calendar No. 10 which was subsequently assumed by Judge Bernard Decker upon his appointment as a Judge of the United States District Court for the Northern District of Illinois, Eastern Division.

4. On September 15, 1961, the defendants through their counsel filed a Motion to Dismiss the Complaint; on September 20, 1961, the defendants filed a brief in support of their Motion to Dismiss; and on October 27, 1961, plaintiff filed its Reply Brief; on December 1, 1961, the defendants filed their response to the plaintiff's Reply Brief.

5. On October 16, 1961, Judge Edwin Robson as Emergency Judge of the Court, signed an order permitting plaintiff to deposit the license fees in question with the Clerk of the Court pending outcome of the litigation. Subsequently orders were entered covering the 1962 and 1963 license fees which are still being held by the Clerk of the Court pending further order of the Court.

6. On June 24, 1963, Judge Bernard Decker heard oral argument by counsel for plaintiff and defendants.

7. On July 5, 1963, the defendants filed a Supplemental Brief to which plaintiff filed its reply on July 12, 1963.

8. On September 9, 1963, Judge Bernard Decker filed a Memorandum Opinion indicating that he would grant defendants' Motion to Dismiss.

9. On October 31, 1963, plaintiff filed its First Amended [fol. 3] Complaint pursuant to leave of court granted October 11, 1963, by Judge Bernard Decker, and on November 21, 1963, the defendants renewed their motion to strike the First Amended Complaint and to dismiss the above-entitled cause.

10. On November 27, 1963, Judge Bernard Decker entered final judgment and decree granting defendants' motion to strike and dismiss for the reason stated in the Memorandum Opinion filed September 9, 1963.

11. On December 13, 1963, the plaintiff filed its Notice of Appeal and Bond on Appeal.

12. On January 17, 1964 the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, transmitted the record on appeal, pursuant to the stipulation entered into by the counsel for respective parties January 8, 1964, to the United States Court of Appeals for the Seventh Circuit.

13. On August 13, 1964, the judgment of the District Court was vacated by the United States Court of Appeals and the cause remanded to the United States District Court.

14. On September 8, 1964, the plaintiff filed a brief with the District Court, and on September 14, 1964, the defendants filed a Brief on Remandment with the District Court.

15. On September 29, 1964, plaintiff, pursuant to leave granted by the District Court, filed its Second Amended Complaint, and on November 24, 1964, pursuant to leave, plaintiff filed an Amendment to Paragraph 3 of its Second Amended Complaint.

16. On January 7, 1965, defendants filed a Motion to Strike the Second Amended Complaint and to dismiss the suit.

17. On March 19, 1965, oral arguments were heard by the District Court on defendants' Motion to Strike Plain-
[fol. 4] tiff's Second Amended Complaint, and the matter was taken under advisement.

18. On May 6, 1965, the District Court granted defendants' motion.

19. On June 1, 1965, plaintiff filed its Notice of Appeal and Bond on Appeal.

Railroad Transfer Service, Inc., Plaintiff-Appellant,
By David Axelrod, Arnold L. Burke, Its Attorneys.

Axelrod, Goodman & Steiner, 39 South La Salle Street, Chicago, Illinois 60603, CEntral 6-9375.

Affidavit of Service (omitted in printing).

[fol. 5]

IN THE UNITED STATES DISTRICT COURT

60-C-1509

SECOND AMENDED COMPLAINT—Filed September 29, 1964

Comes now the plaintiff, Railroad Transfer Service, Inc., a Delaware corporation, by its attorneys Axelrod, Goodman & Steiner and Norman H. Nachman, and files this its Second Amended Complaint for declaratory and injunctive relief until Title 28, Section 2201 of the United States Code and Rule 65 of the Federal Rules of Civil Procedure, and in support thereof, states as follows:

1. That jurisdiction is conferred upon this Court by virtue of Title 28, Sections 1331 and 1337 of the United States Code. The matter in controversy exceeds the sum of Ten Thousand ($10,000.00) Dollars, and, further, plaintiff operates pursuant to Title 49, Sections 1(4), 3(4), 15(3) and 302(c), and pursuant to Title 28 of the United States Code, Section 1337, "the District Courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

2. That it is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal place of business located in the City of Chicago, Illinois.

3. That it has contracted with twenty-one railroads which operate to and from eight Chicago railroad terminals to transport passengers and baggage between said terminals in cases where the passengers arrive in Chicago at one terminal and must leave Chicago by railroad from another terminal for a point beyond Chicago; that over 99 per cent of all such through passenger service is in interstate com-[fol. 6] merce; that each of the railroad terminals is located in downtown Chicago and that the plaintiff provides a link in the through or continuous passenger transportation whenever the railroads involved do not operate to and from the same station; that said service of plaintiff is performed pursuant to applicable tariffs on file, pursuant to law, with the Interstate Commerce Commission, and plaintiff receives its compensation from the twenty-one railroads in accordance with said tariffs.

The required passenger and baggage transfer service to which the holder of through passenger transportation is entitled, and which is provided by plaintiff under its contracts with the railroads, embraces three separate categories of transfer service by motor vehicles, to wit:

(a) The transportation of the through passengers, with or without accompanying hand baggage, from the incoming station to the outgoing station shown on the transfer coupon issued to him as part of his through ticket by the railroad for that purpose upon delivery of the coupon for cancellation to the railroad's agent in the incoming station. Over 99 per cent of all coupon holders are transported with accompanying hand baggage; and in the case of 65 per cent of all coupon holders, such accompanying hand baggage consists of more than one article.

(b) The interstation transportation of the hand baggage of the coupon holder, unaccompanied by him, upon delivery of his coupon for cancellation to the railroad's agent at the incoming station. For this purpose the passenger motor vehicle transporting coupon holder on some suitable vehicle may be used;

(c) The interstation transportation of baggage checked through on the passenger's ticket. Checked baggage is handled in motor vehicles separate from the motor vehicles in which the coupon holders are transferred; and the required transfer is carried out by the railroads without action by the arriving through passenger.

[fol. 7] Since October 1, 1955 to the present time, and for the effective period of its contracts, plaintiff (a) has devoted and will devote its passenger motor vehicles operating under said contracts exclusively for use in the transportation of coupon holders only, and (b) has operated and will operate its vehicles for the performance only of the required transportation of interstation passengers and hand baggage service which the railroads are required by tariff to provide to their through passengers.

4. That the above described service performed by plaintiff has continued under a year-to-year contract between plaintiff and the railroads; that said railroads have advised plaintiff that they will continue to extend said contract for so long as plaintiff is able to perform the required services satisfactorily.

5. That it is subject to the rules and regulations of the Interstate Commerce Commission 49 U. S. C. Sections 1(3)(a), 1(4), 3(4), 304(a)(1) and (2), 314 and 320, and specifically to the rules and regulations of the said Commission pertaining to hours of service for its employees and the safety of operation of its vehicles and their maintenance, and that by order of the Interstate Commerce Commission dated February 17, 1961, a copy of which is attached hereto and made a part hereof as Exhibit A, said rules and regulations of the Commission relating to safety and maintenance of vehicles for motor carriers have been held by the Commission to be applicable to plaintiff.

6. That the defendant, City of Chicago, is a municipal corporation existing under and by virtue of the laws of

the State of Illinois and is located within the County of Cook, State of Illinois; that the defendant Richard J. Daley is the duly elected, qualified and acting mayor of the City of Chicago; that the defendant John C. Melaniphy is the duly appointed, qualified and acting corporation counsel of the City of Chicago; that the defendant Orlando Wilson [fol. 8] is the duly appointed, qualified and acting Superintendent of Police of the City of Chicago; and that the defendant James Carter is the duly appointed, qualified and acting Public Vehicle License Commissioner of the City of Chicago.

7. That the City Council of the City of Chicago has enacted an ordinance which provides:

> "It is unlawful for any person other than a metropolitan transit authority or public utility to operate a motor vehicle, or for the registered owner thereof to permit it to be operated, for the transportation of passengers for hire within the City, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle" (Section 28-2 Municipal Code of Chicago).

That the Public Vehicle License Commissioner of the City of Chicago is authorized to issue said licenses upon application if he finds "that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued" and if the cost of said license is paid by applicant (Section 28-6, Municipal Code of Chicago). A copy of said ordinance as amended is attached hereto as Exhibit B.

8. That among other things, said ordinance arbitrarily requires that plaintiff maintain its principal office in Chicago; that its drivers reside in the City of Chicago; that the plaintiff prove its financial responsibility to the Commissioner, and that its vehicles be comfortable, although said term is not defined.

9. That said ordinance gives the Commissioner and/or the Mayor discretionary authority to revoke and suspend and/or deny licenses to plaintiff without hearing, and without relationship to the safety of plaintiff's operations, and therefore constitutes an arbitrary and capricious harassment of plaintiff, creating an undue burden, hindrance [fol. 9] and obstruction of interstate commerce, and preventing plaintiff from providing service in interstate commerce in accordance with the rules and regulations of the Interstate Commerce Commission and Title 49 United States Code, Sections 1(4), 3(4), 15(3) and 302(c) (Interstate Commerce Act):

10. That "public utility" (that is, a vehicle not subject to regulation and taxation under said ordinance) is defined (so far as is pertinent herein) as follows by Chapter 111⅔ Section 10.3 (Illinois Public Utilities Act, Smith Hurd Illinois Annotated Statutes):

> ". . . equipment or property used or to be used or in connection with the transportation of persons . . . between points within this State . . ."

11. That said ordinance regulates and provides for the taxation of only "Livery" vehicles, "Sightseeing" vehicles, "Taxicabs" and "Terminal vehicles" (Section 28-1 et seq. Municipal Code of Chicago).

12. That said ordinance defines "Terminal vehicle" as follows:

> "(p) The words 'Terminal vehicle' mean a public passenger vehicle which is used exclusively by a coachman under contract with railroad or steamship carriers for the transfer of their passengers and hand baggage enroute in interstate travel between railroad terminals and steamship docks pursuant to through route published tariffs" (Section 28-1, Municipal Code of Chicago, Journal of the Proceedings of the City Council, June 10, 1964, page 2820).

13. That the above quoted definition of "Terminal vehicle" is drafted so as to apply only to the operations conducted in interstate commerce by plaintiff which is under and by virtue of said ordinance (Section 28-1 et seq. of the Municipal Code of Chicago) the only operator of motor vehicle buses for the transportation of passengers [fol. 10] in interstate or intrastate commerce regulated by the City of Chicago.

14. That there are many other operators of motor vehicle buses which transport thousands of passengers in intrastate commerce to, through and from the City of Chicago upon the streets of Chicago each day as public utilities (that is between points within the State of Illinois) in vehicles not materially different from those which are operated over the streets of the City of Chicago by plaintiff, including but not limited to those motor vehicle buses which transport passengers to, from and between airports located within the City of Chicago and those motor vehicle buses which transport passengers between the City of Chicago and its suburbs; and that said ordinance does not apply to said operators of motor vehicle buses in intrastate commerce.

15. That the said ordinance (Section 28-1 et seq. Municipal Code of Chicago) does not apply to any other operator of motor vehicle buses (except sightseeing buses and those few buses which fit the definition of "livery vehicle") in interstate commerce which transport passengers over the streets of the City of Chicago; and that no other such operator of motor buses (except sightseeing buses and those few buses which fit the definition of "livery vehicle") must comply with said ordinance to operate upon the streets of the City of Chicago.

16. That said ordinance requires that the plaintiff pay a license fee of at least $40.00 per vehicle (an additional license fee of $5.00 must be paid for each person over seven which the vehicle is designed to transport); that plaintiff

file an application for licenses upon forms provided by the Public Vehicle License Commissioner of the City of Chicago; that plaintiff have its principal place of business [fol. 11] in the City of Chicago; that plaintiff comply with all applicable orders, rules and regulations adopted or issued by the Public Vehicle License Commissioner of the City of Chicago; that plaintiff's employees comply with said ordinance; that plaintiff keep certain books and records; that plaintiff's vehicles comply with certain specifications set forth by said ordinance.

17. That said Public Vehicle License Commissioner of the City of Chicago pursuant to the authority granted to him to adopt rules and regulations has ordered plaintiff's employees to be fingerprinted and examined by doctors and to pay a fee of $5.00.

18. That plaintiff is the only operator of motor vehicle buses (except sightseeing buses and those few buses which fit the definition of "livery vehicle") for the transportation of passengers to and from points and places using the streets of the City of Chicago which is required to comply with the requirements of and pay the tax set forth by said ordinance (Section 28-1 et seq., Municipal Code of Chicago); that plaintiff is the only operator of motor vehicle buses for the transportation of passengers to and from points and places using the streets of the City of Chicago which can be denied the right to operate its vehicles by the Public License Commissioner of the City of Chicago (Section 28-6, Municipal Code of the City of Chicago); that plaintiff is the only operator of motor vehicle buses for the transportation of passengers to and from points and places using the streets of the City of Chicago which is required to comply with the orders, rules and regulations of the Public Vehicle License Commissioner of the City of Chicago, including the one set forth in Paragraph 14, supra.

19. That plaintiff is required to and does comply with all of the regulations, including those relating to safety, [fol. 12] of the City of Chicago which are applicable to all

motor vehicles which transport passengers on the streets of the City of Chicago; that plaintiff pays all of the taxes required by the City of Chicago and State of Illinois for all motor vehicles which transport passengers on the streets of the City of Chicago; and that plaintiff is the only operator of motor vehicle buses for the transportation of passengers which must comply with Section 28-1 et seq., Municipal Code of Chicago.

20. That the license fee imposed by said ordinance is intended only to reimburse the City for the cost of administering the arbitrary and capricious provisions of said ordinance, and therefore is not a tax as that term is defined by the United States Code (Title 28 U. S. C. 1341).

21. That said ordinance (Section 28-1 et seq., Municipal Code of Chicago) is unconstitutional and void and in direct conflict with Article I, Section 8, Constitution of the United States which provides:

> "The Congress shall have Power . . . to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes: . . ."

for the reason that said ordinance applies only to the transportation of passengers by motor vehicle buses as performed by the plaintiff in interstate commerce on the streets of the City of Chicago, but does not apply to the transportation of passengers on the streets of the City of Chicago in intrastate commerce by motor vehicle buses as performed by others upon the same streets in motor vehicle buses which are not materially different from those operated by the plaintiff.

22. That said ordinance (Section 28-1 et seq., Municipal Code of Chicago) is unconstitutional and void and in [fol. 13] direct conflict with the Fourteenth Amendment to the Constitution of the United States which provides:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

> any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

for the reason that it regulates only plaintiff's operation of vehicles upon the streets of the City of Chicago, but does not regulate others conducting similar operations upon the same streets, and for the reason that it grants to one man the power to deny plaintiff the right to operate upon said streets without hearing, and for violation not only of the explicit provisions of the ordinance, but also for violation of whatever rules may be promulgated pursuant to said ordinance.

23. That said ordinance (Section 28-1 et seq., Municipal Code of Chicago) by regulating the plaintiff discriminates against, unreasonably burdens, and impedes the free flow of interstate commerce in violation of Article I, Section 8 of the Constitution of the United States, which provides:

> "The Congress shall have Power . . . to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes; . . ."

24. That said ordinance (Section 28-1 et seq., Municipal Code of Chicago) by regulating the plaintiff seriously impedes the efficient and uninterrupted flow of interstate commerce which is an integral part of interstate railroad [fol. 14] transportation authorized and subject to regulation under the Interstate Commerce Act, especially Sections 1(4), 3(4), 15(3), and 302(c) of the United States Code, Title 49.

25. That said ordinance (Section 28-1 et seq., Municipal Code of Chicago) by discriminating against plaintiff's interstate transportation of passengers for railroads imposes a substantial obstruction and threat to the adequate, economical and efficient transportation of passengers in interstate commerce.

26. That there is no remedy other than by this action in this Court by which the plaintiff can receive equitable and just relief, and there exists no adequate remedy at law for preventing the multiplicity of suits that will arise from attempted enforcement of this unconstitutional ordinance, and that the plaintiff, in the attempted enforcement of this ordinance, will be harassed in the conduct of its business by the stopping of its vehicles and the assessment of fines and penalties.

Wherefore, the plaintiff prays:

1. That a declaratory judgment be entered decreeing that Section 28-1 et seq. of the Municipal Code of Chicago inhibits the free flow of interstate rail commerce provided for in the Interstate Commerce Act and is also unconstitutional and void and that said ordinance be held for naught;

2. That the City of Chicago and the other named defendants, and each of them, their successors in office and their agents, attorneys and employees, and each and every one of them be permanently restrained and enjoined by the order of this Court from enforcing or instituting proceedings to enforce said ordinance against the plaintiff herein; and

[fol. 15] 3. For such other and further relief as this Court may deem just and proper in the premises.

Axelrod, Goodman & Steiner, By: Arnold Benke, Norman H. Nachman, Attorneys for Plaintiff.

Axelrod, Goodman & Steiner, 39 South LaSalle Street, Chicago, Illinois 60603, CEntral 6-9375, Norman H. Nachman, 38 South Dearborn Street, Chicago, Illinois 60603, ANdover 3-1480.

Certificate of Service (omitted in printing).

[fol. 16]

EXHIBIT A TO SECOND AMENDED COMPLAINT

Order.

At a Session of the Interstate Commerce Commission, Finance Board No. 1, held at its office in Washington, D. C., on the 17th day of February, A. D. 1961.

No. MC-F-7717

John L. Keeshin—Control; Fidelity Industries, Inc.—Control; Railroad Transfer Service, Inc.—Control; Illinois Railroad Transfer Service, Inc.—Purchase—Flash Charter Coach Co.

It appearing, That by joint application filed November 18, 1960, as supplemented, Illinois Railroad Transfer Service, Inc., of Chicago, Ill., and Flash Charter Coach Co., of Long Grove, Ill., seek authority under section 5 of the Interstate Commerce Act, for the purchase by the former of the operating rights and certain property of the latter for $17,500, and that, in the same application, Railroad Transfer Service, Inc., also of Chicago, which controls Illinois Railroad Transfer Service, Inc., through ownership of capital stock, and, in turn, Fidelity Industries, Inc., a non carrier, and John L. Keeshin, an individual, both of Chicago, who control Railroad Transfer Service, Inc., through stock ownership, and Keeshin Transport System, of Chicago, seek authority under the same section to acquire concurrent control of the operating rights and property through the purchase;

It further appearing, That the operating rights proposed to be purchased are those described in certificate No. MC-118044, issued August 17, 1959, authorizing operations in interstate or foreign commerce, as a motor common carrier, over irregular routes, of passengers and their bag-[fol. 17] gage, restricted to traffic originating in the territory indicated, in charter operations, from points in Cook

and Will Counties, Ill., and in Lake County, Ind., to points in the District of Columbia, Arkansas, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin, and return;

It further appearing, That Keeshin Transport System, Inc., an affiliate of the vendee, does not possess the power to exercise direct or indirect control of the latter, and, therefore, is not a proper party applicant, and as to it the application should be dismissed;

It further appearing, That applicants have failed to submit evidence showing why Railroad Transfer Service, Inc., and Fidelity Industries, Inc., should not be subjected to certain provisions of Part II of the Interstate Commerce Act pursuant to provisions of section 5(3) of the said act;

It further appearing, That vendee is able, financially and otherwise, to purchase the aforementioned operating rights and property and to conduct operations thereunder in interstate or foreign commerce; that the terms and conditions of the transaction as set forth in the application, and the agreement of record, would be just and reasonable; that the fixed charges incurred would not be contrary to the public interest; that no employees would be adversely affected as a result of the transaction; and that the transaction is within the scope of section 5(2)(a), and will be consistent with the public interest:

It is ordered, That the application, to the extent authority is sought by Keeshin Transport System, Inc., to acquire control of the operating rights and property through the transaction, be, and it is hereby, dismissed;

[fol. 18] It is further ordered, That the purchase by Illinois Railroad Transfer Service, Inc., of the operating rights and property of Flash Charter Coach Co., and the acquisition by Railroad Transfer Service, Inc., and, in turn, by

Fidelity Industries, Inc., and John L. Keeshin, of control of the operating rights and property through the purchase, upon the said terms and conditions be, and they are hereby approved and authorized; and that if the transaction is consummated, vendee will be entitled to operate under said operating rights granted in No. MC-118044 and to be embraced in a certificate issued in its name;

It is further ordered, That upon consummation of the transaction herein authorized, Railroad Transfer Service, Inc., and Fidelity Industries, Inc., shall be considered as motor carriers subject to the provisions of sections 204(a) (1) and (2) 214, and 220 of part II of the Interstate Commerce Act;

It is further ordered, That, if the parties to the transaction herein authorized desire to consummate same, they shall (1) promptly take such steps as will insure compliance with sections 215, 217, and 221(c) of the Interstate Commerce Act, and with rules, regulations, and requirements prescribed thereunder; and (2) confirm in writing to the Commission, immediately after consummation, the date on which consummation has actually taken place;

It is further ordered, That, if the authority herein granted is exercised, Illinois Railroad Transfer Service, Inc., shall submit for consideration and approval, a sworn statement, and one copy thereof, showing all expenditures made, by dates, or to be made in connection with the transaction authorized, including the consideration, legal and other fees, commissions, witness fees, and any other cost incidental to the transaction, the assets acquired, and the liabilities assumed, indicating the account number and title to which each item has been or is to be debited or credited;

[fol. 19] It is further ordered, That, the authority herein granted shall be effective on the date hereof;

It is further ordered, That, unless the authority herein granted is exercised within 180 days of the date hereof, this order shall be of no further force and effect;

And it is further ordered, That recital in said report of balance sheet and other financial data shall not be construed as approving accounting methods which have been followed, or expenditures represented thereby.

By the Commission, Finance Board No. 1.

Harold D. McCoy,
Secretary.

(Seal)

[fol. 21]

EXHIBIT B TO SECOND AMENDED COMPLAINT

28-1

*CHAPTER 28

PUBLIC PASSENGER VEHICLES

28-1. Definitions
28-2. License required
28-3. Interurban operations
28-4. Inspections
28-4.1. Specifications
28-5. Application
28-6. Investigation and issuance of license
28-7. License fees
28-8. Renewal of licenses
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28-11. License card
28-12. Insurance
28-13. Payment of judgments and awards
28-14. Suspension of license
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28-18. Notice
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28-19.2. Solicitation of passengers prohibited
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28-21. Sightseeing vehicles
28-22. Taxicabs
28-22.1. Public convenience and necessity
28-23. Identification of taxicab and cabman
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28-28. Taxicab service
28-29. Group riding
28-29.1. Front seat passenger
28-30. Taxicab fares
28-31. Terminal vehicle
28-31.1. Public convenience and necessity
28-31.2 Local fares
28-32. Penalty

28-1. As used in this chapter:

"Busman" means a person engaged in business as proprietor of one or more sightseeing buses.

"Cabman" means a person engaged in business as proprietor of one or more taxicabs or livery vehicles.

"Chauffeur" means the driver of a public passenger vehicle licensed by the city of Chicago as a public chauffeur.

"City" means the city of Chicago.

"Coachman" means a person engaged in business as proprietor of one or more terminal vehicles.

"Commissioner" means the public vehicle license commissioner, or any other body or officer having supervision of public passenger vehicle operations in the city.

"Council" means the city council of the city of Chicago.

"Livery vehicle" means a public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance.

"Person" means a natural person, firm or corporation in his own capacity and not in a representative capacity, the personal pronoun being applicable to all such persons of any number or gender.

"Public passenger vehicle" means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting those devoted exclusively for funeral use or in operation of a metropolitan transit authority or public utility under the laws of Illinois.

"Sightseeing vehicle" means a public passenger vehicle for hire principally on sightseeing tours at a charge or fare per passenger for each tour fixed by agreement in advance or for hire otherwise at a charge for each vehicle per trip fixed by agreement in advance.

"Taxicab" means a public passenger vehicle for hire only at lawful rates of fare recorded and indicated by taximeter in operation when the vehicle is in use for transportation of any passenger.

"Taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers.

*For amendments to former Chapter 28 prior to its revision on 12-20-51, see footnote at end of this chapter.

TEXT IS POOR

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[fol.

"Terminal vehicle" means a public passenger vehicle which is operated exclusively for the transportation of passengers from railroad terminal stations and steamship docks to points within the area defined in section 28-31. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905; 7-28-55, p. 827.]

License required

28-2. It is unlawful for any person other than a metropolitan transit authority or public utility to operate any vehicle, or for any such person who is the owner of any vehicle to permit it to be operated, on any public way for the transportation of passengers for hire from place to place within the corporate limits of the city, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle.

It is unlawful for any person to hold himself out to the public by advertisement or otherwise as a busman, cabman or coachman or as one who provides or furnishes any kind of public passenger vehicle service unless he has one or more public passenger vehicles licensed for the class of service offered; provided that any association or corporation which furnishes call service for transportation may advertise the class of service which may be rendered to its members or subscribers, as provided in this chapter, if it assumes the liability and furnishes the insurance as required by section 28-23. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

Interurban operations

28-3. Nothing in this chapter shall be construed to prohibit any public passenger vehicle from coming into the city to discharge passengers accepted for transportation outside the city. While such vehicle is in the city no person shall solicit passengers therefor and no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire. A white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed on the windshield of the vehicle. Any person in control or possession of such vehicle who violates the provisions of this section shall be subject to arrest and fine of not less than fifty dollars nor more than two hundred dollars for each offense. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Inspections

28-4. No vehicle shall be licensed as a public passenger vehicle until it has been inspected under the direction of the commissioner and found to be in safe operating condition and to have adequate body and seating facilities which are clean and in good repair for the comfort and convenience of passengers. [Passed. Coun. J. 12-30-51, p. 1596; amend. 12-30-52, p. 3905.]

Specifications

28-4.1. No vehicle shall be licensed as a livery vehicle or taxicab unless it has two doors on each side, and no vehicle having seating capacity for more than seven passengers shall be licensed as a public passenger vehicle unless it has at least three doors on each side or fixed aisle space for passage to doors. [Passed. Coun. J. 12-30-52, p. 3905.]

Application

28-5. Application for public passenger vehicle licenses shall be made in writing signed and sworn to by the applicant upon forms provided by the commissioner. The application shall contain the full name and Chicago street address of the applicant, the manufacturer's name, model, length of time in use, horse power and seating capacity of the vehicle applicant will use if a license is issued, and the class of public passenger vehicle license requested. The commissioner shall cause each application to be stamped with the time and date of its receipt. The applicant shall submit a statement of his assets and liabilities with his application. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Investigation and issuance of license

28-6. Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition as provided in this chapter, the commissioner shall

issue a public passenger vehicle license to the owner of the vehicle for the license period ending on the thirty-first day of December following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year. [Passed. Coun. J. 12-20-51, p. 1596; amend. 4-16-52, p. 2178.]

License fee

28-7. The annual fee for each public passenger vehicle license of the class herein set forth is as follows:

Livery vehicle	$ 25.00
Sightseeing vehicle	125.00
Taxicab	40.00
Terminal vehicle	25.00

Said fee shall be paid in advance when the license is issued and shall be applied to the cost of issuing such license, including, without being limited to, the investigations, inspections and supervision necessary therefor, and to the cost of regulating all operations of public passenger vehicles as provided in this chapter.

Nothing in this section shall affect the right of the city to impose or collect a vehicle tax and any occupational tax, as authorized by the laws of the state of Illinois, in addition to the license fee herein provided. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Issuance of licenses

28-8. All licenses for public passenger vehicles issued for the year 1951, which have not been revoked or surrendered prior to the time when such licenses for the year 1952 shall have been issued, may be renewed from year to year, subject to the provisions of this chapter. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Terminal license—Limit—Employment practices

28-9. No public passenger vehicle license shall be subject to voluntary assignment or transfer by operation of law, except in the event of the licensee's induction or recall into the armed forces of the United States for active duty or in the event of the licensee's death. In case of death the assignment shall be made by the legal representatives of his estate. No assignment shall be effective until the assignee shall have filed application for a license and is found to be qualified as provided in sections 28-5 and 28-6. If qualified the license shall be transferred to him by the commissioner, subject to payment of a transfer fee of $50.00, the assumption by the assignee of all liabilities for loss or damage resulting from any occurrence arising out of or caused by the operation or use of the licensed public passenger vehicle before the effective date of the transfer and the approval by the commissioner of the insurance to be furnished by the busman, cabman or coachman as required by section 28-12.

It is unlawful for any busman, cabman or coachman to lease or loan a licensed public passenger vehicle for operation by any person for transportation of passengers for hire within the city. No person other than a chauffeur, who is either the busman, cabman or coachman or one hired by the busman, cabman or coachman to drive such vehicle as his agent or employee, in the manner prescribed by the busman, cabman or coachman, shall operate such vehicle for the transportation of passengers for hire within the city.

There shall be no discrimination by any busman, cabman or coachman against any person employed or seeking employment as a chauffeur with respect to hire, promotion, tenure, terms, conditions and privileges of employment on account of race, color, religion, national origin or ancestry. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

Emblem

28-10. The commissioner shall deliver with each license a sticker license emblem which shall bear the words "Public Vehicle License" and "Chicago" and the numerals designating the year for which such license is issued, a reproduction of the corporate seal of the city, the names of the mayor and the commissioner and serial number identical with the number of the public vehicle license. The predominant back-ground colors of such sticker license emblems shall be different from the vehicle tax emblem for the same year and shall be changed annually. The busman, cabman or coachman shall affix, or cause to be affixed, said sticker emblem on the inside of the glass part of the windshield of said vehicle. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

License card

28-11. In addition to the license and sticker emblem the commissioner shall deliver a license card for each vehicle. Said card shall contain the name of the busman, cabman or coachman, the license number of the vehicle and the date of inspection thereof. It shall be signed by the commissioner and shall contain blank spaces upon which entries of the date of every inspection of the vehicle and [illegible] other entries as may be required shall be made. It shall be of different color each year. A suitable frame with glass cover shall be provided and affixed on the inside of the vehicle in a conspicuous place and in such maner as may be determined by the commissioner for insertion and removal of the public passenger vehicle license card; and in every livery vehicle and taxicab said frame shall also be provided for insertion and removal of the chauffeur's license card and such other notice as may be required by the provisions of this chapter and the rules of the commissioner. It is unlawful to carry any passenger or his baggage unless the license cards are exposed in the frame as provided in this section. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Insurance

28-12. Every busman, cabman or coachman shall carry public liability and property damage insurance and workmen's compensation insurance for his employees with solvent and responsible insurers approved by the commissioner, authorized to transact such insurance business in the state of Illinois, and qualified to assume the risk for the amounts hereinafter set forth under the laws of Illinois, to secure payment of any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the busman's, cabman's or coachman's public passenger vehicles.

The public liability insurance policy or contract may cover one or more public passenger vehicles, but each vehicle shall be insured for the sum of at least five thousand dollars for property damage and fifty thousand dollars for injuries to or death of any one person and each vehicle having seating capacity for not more than seven adult passengers shall be insured for the sum of at least one hundred thousand dollars for injuries to or death of more than one person in any one accident. Each vehicle having seating capacity for more than seven adult passengers shall be insured for injuries to or death of more than one person in any one accident for at least five thousand dollars more for each such additional passenger capacity. Every insurance policy or contract for such insurance shall provide for the payment and satisfaction of any final judgment rendered against the busman, cabman or coachman and person insured, or any person driving any insured vehicle, and that suit may be brought in any court of competent jurisdiction upon such policy or contract by any person having claim arising from the operation or use of such vehicle. It shall contain a description of each public passenger vehicle insured, manufacturer's name and number, the state license number and the public passenger vehicle license number.

In lieu of an insurance policy or contract a surety bond or bonds with a corporate surety or sureties authorized to do business under the laws of Illinois, may be accepted by the commissioner for all or any part of such insurance; provided that each bond shall be conditioned for the payment and satisfaction of any final judgment in conformity with the provisions of an insurance policy required by this section.

All insurance policies or contracts or surety bonds required by this section, or copies thereof certified by the insurers or sureties, shall be filed with the commissioner and no insurance or bond shall be subject to cancellation except on thirty days' previous notice to the commissioner. If any insurance or bond is cancelled or permitted to lapse for any reason, the commissioner shall suspend the license for the vehicle affected for a period not to exceed thirty days, to permit other insurance or bond to be supplied in compliance with the provisions of this section. If such other insurance or bond is not supplied, within the period of suspension of the license, the mayor shall revoke the license for such vehicle. [Passed. Coun. J. 12-20-51, 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

Payment of judgments and awards

28-13. All judgments and awards rendered by any court or commission of competent jurisdiction for loss or damage in the operation or use of any public passenger vehicle shall be paid by the busman, cabman or coachman within ninety days after they shall become final and not stayed by supersedeas. This

obligation is absolute and not contingent upon the collection of any indemnity from insurance. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Suspension of license.

28-14. If any public passenger vehicle shall become unsafe for operation or if its body or seating facilities shall be so damaged, deteriorated or unclean as to render said vehicle unfit for public use, the license therefor shall be suspended by the commissioner until the vehicle shall be made safe for operation and its body shall be repaired and painted and its seating facilities shall be reconditioned or replaced as directed by the commissioner. In determining whether any public passenger vehicle is unfit for public use the commissioner shall give consideration to its effect on the health, comfort and convenience of passengers and its public appearance on the streets of the city.

Upon suspension of a license for any cause, under the provisions of this chapter, the license sticker emblem shall be removed by the commissioner from the windshield of the vehicle and an entry of the suspension shall be made on the license card. If the suspension is terminated an entry thereof shall be made on the license card by the commissioner and a duplicate license sticker shall be furnished by the commissioner for a fee of one dollar. The commissioner shall notify the department of police of every suspension and termination of suspension. [Passed. Coun. J. 12-20-51, p. 1596.]

Revocation of license.

28-15. If any summons or subpoena issued by a court or commission cannot be served upon the busman, cabman or coachman at his last Chicago address recorded in the office of the commissioner within sixty days after such process is delivered to the person authorized to serve it, and the busman, cabman, or coachman fails to appear in answer to such process for want of service, or if any busman, cabman or coachman shall refuse or fail to pay any judgment or award as provided in section 28-13, or shall lease or loan any of his licensed public passenger vehicles for operation by any person for hire or shall be convicted of a felony or any criminal offense involving moral turpitude, the mayor shall revoke all public vehicle licenses held by him.

If any public passenger vehicle license was obtained by application in which any material fact was omitted or stated falsely, or if any public passenger vehicle is operated in violation of the provisions of this chapter for which revocation of the license is not mandatory, or if any public passenger vehicle is operated in violation of the rules and regulations of the commissioner relating to the administration and enforcement of the provisions of this chapter, the commissioner may recommend to the mayor that the public passenger vehicle license therefor be revoked and the mayor, in his discretion, may revoke said license.

Upon revocation of any license, the commissioner shall remove the license sticker emblem and the license card from the vehicle affected. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

Interference with commissioner's duties.

28-16. Every busman, cabman or coachman shall deliver or submit his public passenger vehicles for inspection or the performance of any other duty by the commissioner upon demand. It is unlawful for any person to interfere with or hinder or prevent the commissioner from discharging any duty in the enforcement of this chapter. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

[illegible] seat passenger.

28-17. It is unlawful to permit more than one passenger to occupy the front seat with the chauffeur in any public passenger vehicle. [Passed. Coun. J. 12-20-51, p. 1596.]

Notice.

28-18. It is the duty of every busman, cabman or coachman to notify the commissioner whenever any change in his Chicago address is made. Any notice required to be given to the busman, cabman or coachman shall be sufficient if addressed to the last Chicago address recorded in the office of the commissioner. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Livery vehicles.

28-19. No person shall be qualified for a livery vehicle license and a taxicab license at the same time; nor shall any person having a livery vehicle license be associated with anyone for sending or receiving calls for taxicab service.

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No license for any livery vehicle shall be issued except in the anual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing, the commissioner shall determine that public convenience and necessity require additional livery service and shall recommend to the council the maximum number of such licenses to be authorized [illegible]ssance.

. . . not more than six passengers shall be accepted for transportation in a livery vehicle on any trip. [Passed. Coun. J. 12-20-51. p. 1596; amend. 1-30-52, p. 1921.]

Taximeter prohibited

28-19.1. It is unlawful for any person to operate or drive a livery vehicle equipped with a meter which registers a charge or fare or indicates the distance traveled by which the charge or fare to be paid by a passenger is measured. [Passed. Coun. J. 1-30-52, p. 1921.]

Solicitation of passengers prohibited

28-19.2. It is unlawful for any person to solicit passengers for transportation in a livery vehicle on any public way. No such vehicle shall be parked on any public way for a time longer than is reasonably necessary to accept passengers in answer to a call for service and no passengers shall be accepted for any trip in such vehicle without previous engagement for such trip, at a fixed charge or fare, through the station or office from which said vehicle is operated. [Passed. Coun. J. 1-30-52, p. 1921.]

Livery advertising

28-20. It is unlawful for the cabman of any livery vehicle, or the station from which it is operated to use the word "taxi", "taxicab" or "cab" in connection with or as part of the name of the cabman or his trade name.

The outside of the body of each livery vehicle shall be uniform black, blue or blue-black color. No light fixtures or lights shall be attached to or exposed so as to be visible outside of any livery vehicle, except such as are required by the law of the state of Illinois regulating traffic by motor vehicles and one rear red light in addition to those required by said law. No name, number or advertisement of any kind, excepting official license emblems or plates, shall be painted or carried so as to be visible outside of any livery vehicle.

It is unlawful for any person to hold himself out to the public by advertisement, or otherwise, to render any livery service unless he is the cabman of a licensed livery vehicle. [Passed. Coun. J. 12-20-51, p. 1596.]

Sightseeing vehicles

28-21. Sightseeing vehicles shall not be used for transportation of passengers for hire except on sightseeing tours or chartered trips. Passengers for sightseeing tours shall not be solicited upon any public way except at bus stands specially designated by the council for sightseeing vehicles.

It is unlawful for any cabman or coachman to advertise his public passenger vehicle for hire on sightseeing tours. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Taxicabs

28-22. Every taxicab shall be operated regularly to the extent reasonably necessary to meet the public demand for service. If the service of any taxicab is discontinued for any reason except on account of strike, act of God or cause beyond the control of the cabman, the commissioner may give written notice to the cabman to restore the taxicab to service, and if it is not restored within five days after notice, the commissioner may recommend to the mayor that the taxicab license be revoked and the mayor, in his discretion, may revoke same. [Passed. Coun. J. 12-20-51, p. 1596.]

Public convenience and necessity

28-22.1. Not more than 3761 taxicab licenses shall be issued unless, after a public hearing, the commissioner shall report to the council that public convenience and necessity require additional taxicab service and shall recommend the number of taxicab licenses which may be issued. Notice of such hearing stating the time and place thereof shall be published in the official newspaper of the city at least twenty days prior to the hearing and by mailing a copy thereof to all taxicab licensees. At such hearing any licensee, in person or by attorney, shall have the right to cross-examine witnesses and to introduce evidence pertinent to the subject. At any time and place fixed for such hearing it may be adjourned to another time and place without further notice.

In determining whether public convenience and necessity require additional taxicab service, due consideration shall be given to the following:

1. The public demand for taxicab service;
2. The effect of an increase in the number of taxicabs on the safety of existing vehicular and pedestrian traffic;
3. The effect of increased competition,
   (a) on revenues of taxicab licensees;
   (b) on cost of rendering taxicab service, including provisions for proper reserves and a fair return on investment in property devoted to such service;
   (c) on the wages or compensation, hours and conditions of service of taxicab chauffeurs;
4. The effect of a reduction, if any, in the level of net revenues to taxicab licensees on reasonable rates of fare for taxicab service;
5. Any other facts which the commissioner may deem relevant.

If the commissioner shall report that public convenience and necessity require additional taxicab service, the council, by ordinance, may fix the maximum number of taxicab licenses to be issued, not to exceed the number recommended by the commissioner. [Passed. Coun. J. 1-30-52, p. 1921.]

Identification of taxicab and cabman

28-23. Every taxicab shall have the cabman's name, telephone number and the public passenger vehicle license number plainly painted in plain Gothic letters and figures of three-eighth inch stroke and at least two inches in height in the center of the main panel of the rear doors of said vehicle. In lieu of the cabman's telephone number the name and telephone number of any corporation or association with which the cabman is affiliated may be painted in the same manner, provided such corporation or association shall have assumed equal liability with the cabman for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the cabman's taxicabs and shall carry and furnish to the commissioner public liability and property damage insurance to secure payment of such loss or damage as provided in section 28-12. The public vehicle license number assigned to any taxicab shall be assigned to the same vehicle or to any vehicle substituted therefor upon annual renewal of the license. No other name, number or advertisement of any kind, excepting signs required by this chapter, official license emblems or plates and a trade emblem, in a manner approved by the commissioner, shall be painted or carried so as to be visible on the outside of any taxicab. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Taximeters

28-24. Every taxicab shall be equipped with a taximeter connected with and operated from the transmission of the taxicab to which it is attached. The taximeter shall be equipped with a flag at least three inches by two inches in size. The flag shall be plainly visible from the street and shall be kept up when the taxicab is for hire and shall be kept down when it is engaged.

Taximeters shall have a dial or dials to register the tariff in accordance with the lawful rates and charges. The dial shall be in plain view of the passenger while riding and between sunset and sunrise the dial shall be lighted to enable the passenger to read it.

It is unlawful to operate a taxicab for hire within the city unless the taximeter attached thereto has been sealed by the commissioner. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, 1921.]

Taximeter inspection

28-25. At the time a taxicab license is issued and semi-annually thereafter the taximeter shall be inspected and tested by the commissioner to determine if it complies with the specifications of this chapter and accurately registers the lawful rates and charges. If it is in proper condition for use, the taximeter shall be sealed and a written certificate of inspection shall be issued by the commissioner to the cabman. Upon complaint by any person that a taximeter is out of working order or does not accurately register the lawful rates and charges it shall be again inspected and tested and, if found to be in improper working condition or inaccurate, it shall be unlawful to operate the taxicab to which it is attached until it is equipped with a taximeter which has been inspected and tested by the commissioner, found to be in proper condition, sealed and a written certificate of inspection therefor is issued.

Terminal vehicles

28-31. Terminal vehicles shall not be used for transportation of passengers for hire except from railroad terminal stations and steamship docks to destinations in the area bounded on the north by E. and W. Ohio street; on the west by N. and S. Desplaines street; on the south by E. and W. Roosevelt road; and on the east by Lake Michigan. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905; 7-26-55, p. 897.]

Service and [illegible]

28-31.1 No license for any terminal vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing held in the same manner as specified for hearings in section 28-22.1, the commissioner shall report to the council that public convenience and necessity require additional terminal vehicle service and shall recommend the number of such vehicle licenses which may be issued.

In determining whether public convenience and necessity require additional terminal vehicle service due consideration shall be given to the following:

1. **The public demand for such service;**
2. **The effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic in the area of their operation;**
3. **The effect of an increase in the number of such vehicles upon the ability of the licensee to continue rendering the required service at reasonable fares and charges to provide revenue sufficient to pay for all costs of such service, including fair and equitable wages and compensation for licensee's employees and a fair return on the investment in property devoted to such service;**
4. **Any other facts which the commissioner may deem relevant.**

If the commissioner shall report that public convenience and necessity require additional terminal vehicle service, the council, by ordinance, may fix the maximum number of terminal vehicle licenses to be issued not to exceed the number recommended by the commissioner. [Passed. Coun. J. 7-26-55, p. 897.]

Local fares

28-31.2. The rate of fare for local transportation of every passenger in terminal vehicles of the licensee shall be uniform, regardless of the distance traveled; provided that children under 12 years of age, when accompanied by an adult, shall be carried at not more than half fare. Such rates of fare shall be posted in a conspicuous place or places within each vehicle as determined by the commissioner. [Passed. Coun. J. 7-26-55, p. 897.]

Penalty

28-32. Any person violating any provision of this chapter for which a penalty is not otherwise provided shall be fined not less than $5.00 nor more than $100.00 for the first offense, not less than $25.00 nor more than $100.00 for the second offense during the same calendar year, and not less than $50.00 nor more than $100.00 for the third and succeeding offenses during the same calendar year, and each day that such violation shall continue shall be deemed a separate and distinct offense. [Passed. Coun. J. 12-20-51, p. 1596.]

NOTE: The following list covers amendments prior to 12-20-51 to former Chapter 28, revised 12-20-45, p. 4639:

28-1. 2-9-48, p. 1918; 2-1-48, p. 1943.
28-2. 2-28-46, p. 6167; 2-5-47, p. 7240; 2-6-48, p. 1918.
28-15. 2-28-46, p. 6167; 2-5-47, p. 7249; 2-6-48, p. 1918.
28-16. 2-6-48, p. 1918; 2-1-48, p. 1943; 12-29-50, p. 7622.
28-29. 2-28-46, p. 6178.
28-30. 2-21-41, p. 6457; 10-27-43, p. 803; 12-22-44, p. 3626.
28-31. 10-27-43, p. 803.
28-32. 2-21-41, p. 6457.

J. P. Burke, Krska, Sheridan, Murray, Fitzpatrick, Campbell, Ronk, Janousek, Tourek, Lewis, Marzullo, Sain, T. F. Burke, Ronan, Keane, Sulaki, Brandt, Saide, Laskowski, Massey, Corcoran, Cullerton, Shapiro, Simon, Bell, Crowe, Bauler, Rosenberg, Weber, Young, Hirsh—41.

Nays—Aldermen Bohling, Hoellen, Sperling—3.

The following is said ordinance as passed:

AMENDMENTS TO CHAPTER 28 OF THE MUNICIPAL CODE RELATING TO PUBLIC PASSENGER VEHICLES.

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Section 28-1 of the Municipal Code of Chicago is amended to read as follows:

28-1 *Definitions.*) "Cabman" means a person engaged in business as proprietor of one or more taxicabs.

"Chauffeur" means the driver of a public passenger vehicle licensed by the city of Chicago as a public chauffeur.

"City" means the city of Chicago.

"Coachman" means a person engaged in business as proprietor of one or more *livery vehicles, sight-seeing vehicles* or terminal vehicles.

"Commissioner" means the public vehicle license commissioner, or any other body or officer having supervision of public passenger vehicle operations in the city.

"Council" means the city council of the city of Chicago.

"Livery vehicle" means a public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance.

"Person" means a natural person, firm, association or corporation in his own capacity and not in a representative capacity, the personal pronoun being applicable to all such persons of any number or gender.

"Public passenger vehicle" means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting in operation of a metropolitan transit authority or public utility under the laws of Illinois.

"Sightseeing vehicle" means a public passenger vehicle for hire principally on sightseeing tours at a charge or fare per passenger for each tour fixed by agreement in advance or for hire otherwise at a charge for each vehicle per trip fixed by agreement in advance.

"Taxicab" means a public passenger vehicle for hire only at lawful rates of fare recorded and indicated by taximeter in operation when the vehicle is in use for transportation of any passenger.

"Taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers.

"Terminal vehicle" means a public passenger vehicle which is used exclusively *by a coachman under contract with railroad or steamship carriers* for the transfer of *their passengers and hand baggage on route in interstate travel between railroad terminals and steamship docks pursuant to through route published tariffs.*

SECTION 2. Section 28-6 of said code is amended by striking out the last sentence of said section and substituting therefor the following:

If the commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed, and that the applicant is qualified to pursue the occupation of a cabman or coachman, the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued.

SECTION 3. Section 28-7 of said code is amended by striking out the schedule of fees for each public passenger vehicle license and substituting therefor the following:

Livery vehicle	$ 40.00
for each vehicle designed or used for carrying not more than seven persons, and $5.00 more for each additional person.	
Sightseeing vehicle	$150.00
Taxicab	$ 60.00
Terminal vehicle	$ 40.00
for each vehicle designed or used for carrying not more than seven persons, and $5.00 more for each additional person.	

SECTION 4. Sections 28-10, 28-11, 28-12, 28-16 and 28-18 of said code are amended by striking out the word "busman" and the comma following same, wherever same appear in said sections.

SECTION 5. Sections 28-2, 28-3, 28-4.1, 28-5, 28-9, 28-13, 28-15, 28-19, 28-20, 28-21, 28-22.1, 28-23 and 28-28 are amended, and Sections 28-5.1, 28-9.1, 28-12.1, 28-13.1, 28-15.1 and 28-30.1 are added to said code, the amended and added sections to read as follows:

28-2 *License required.*) It is unlawful for any person other than a metropolitan transit authority or public utility to operate a motor vehicle, or for the registered owner thereof to permit it to be operated, for the transportation of passengers for hire within the city, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle.

28-3 *Interurban operations.*) Nothing in this chapter shall be construed to prohibit any public passenger vehicle from coming into the city to discharge passengers accepted for transportation outside the city. While said vehicle is in the city no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire, and a white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed at the windshield of the vehicle. *No person shall be solicited or accepted in said vehicle for transportation from any place within the city.* Any person in control or possession of said vehicle who violates any of the provisions of this section shall be subject to arrest and fine of not less than fifty dollars nor more than two hundred dollars for each offense.

28-4.1 *Specifications.*) No vehicle shall be licensed as a public passenger vehicle unless it has *two doors on each side, and no vehicle having seating capacity for more than eight adult passengers shall be so licensed unless it has at least*

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[fol. 30]

two doors with fixed aisle space for egress to said doors.

28-5 *Application.*) Application for public passenger vehicle licenses shall be made in writing, signed and sworn to by the applicant or, *if applicant is a corporation, by its duly authorized agent,* upon forms provided by the commissioner. The application shall contain the full name, Chicago *business address, residence address of the applicant, the business telephone number of the applicant,* the manufacturer's name, model, length of time in use, horsepower and seating capacity of the vehicle which applicant will use, if a license is issued, and the class of public passenger vehicle license requested. *If the applicant is affiliated or to become affiliated or identified with any person by the color scheme of vehicles, trade name or emblem, telephone number, radio dispatch system, or service agreement, the application shall contain the full name, Chicago business address and telephone number of said affiliate, and a copy of the agreement with said affiliate, if any, shall be filed with the application.*

28-5.1 *Qualifications.*) All corporate applicants for public passenger vehicle licenses shall be organized or qualified to do business under the laws of Illinois and have their principal places of business in the city of Chicago, and all other applicants shall be citizens of the United States residing and domiciled in the city of Chicago. No person shall be qualified for license, if affiliated or identified with any person, by agreement or otherwise, as described in section 28-5, unless said affiliate is a corporation organized or qualified to do business under the laws of Illinois and has its principal place of business in Chicago or is a citizen of the United States residing and domiciled in the city of Chicago, registered with the commissioner, and has complied with all the provisions of this ordinance and all orders, rules and regulations adopted or issued by the commissioner governing the business of such affiliates.

28-9 *Personal License — Fair Employment Practice.*) *The relations between the licensee of any public passenger vehicle and the drivers thereof shall be that of employer and employee.* It is unlawful for any cabman or coachman to lease or loan his public passenger vehicle or to contract for the *independent operation thereof by any affiliate for transportation of passengers for hire within the city, or to contract with any affiliate for management of the cabman's or coachman's operations for any consideration other than payment of a stipulated cost of service charge to such affiliate. No person other than a chauffeur who is either the cabman or coachman, or one hired by him or his affiliate for wages, commissions or other compensation for his service as chauffeur, shall drive* such vehicle for the transportation of passengers for hire within the city. There shall be no discrimination against any person employed or seeking employment as a chauffeur with respect to hire, promotion, tenure, terms and conditions of employment on account of race, color, religion, national origin or ancestry.

28-9.1 *Limited Assignability.*) No public passenger vehicle license shall be subject to voluntary assignment or transfer by operation of law, except in the event of the licensee's induction or recall into the armed forces of the United States for active duty or in the event of the licensee's death. In case of death the assignment shall be made by the legal representatives of his estate. No assignment shall be effective unless made to a natural person and until such assignee shall have filed application for a license and is found to be qualified as provided in sections 28-5, 28-5.1 and 28-6. If qualified the license shall be transferred to him by the commissioner, subject to payment of a transfer fee of $50.00, and approval by the commissioner of the insurance required by section 28-12 or 28-12.1.

28-12.1 *Registration by Affiliates—Liability—Insurance.*) Every affiliate of any cabman or coachman shall be registered in the office of the commissioner and promptly report the full name, Chicago business address and residence address of each cabman or coachman so affiliated.

Upon registration, the affiliate shall become primarily liable for personal injury, death and property damage resulting from any occurrence arising out of or caused by the operation or use of any public passenger vehicle in any manner identified with the affiliate, without identification of the cabman, coachman or chauffeur responsible.

Said affiliate shall provide public liability and property damage insurance covering the affiliate and all his affiliated cabmen or coachmen, and all their public passenger vehicles, in lieu of such insurance required to be carried by each cabman or coachman pursuant to section 28-12. All such insurance policies or contracts, or surety bonds, or copies thereof certified by the insurers or sureties shall be filed with the commissioner and shall be subject to the provisions of section 28-12 relating to cancellation or lapse.

28-30.1 *Books and Records.)* Every cabman and affiliate shall keep and provide accurate books and records of account of his operations at his place of business in the city. On or before May 1 of each year, every cabman and affiliate shall file with the commissioner a profit and loss statement for the preceding calendar year, showing all his earnings and expenditures for operation, maintenance and repair of property, depreciation expense, premiums paid for workmen's compensation and public liability insurance, and taxes paid for unemployment insurance and social security, and all state and local license fees, property taxes and federal income taxes, and a balance sheet taken at the close of said year.

The commissioner, or the authorized committee of the council, shall have access to the property, books, contracts, accounts and records during normal business hours at said place of business, for such information as may be required for the effective administration and enforcement of the provisions of this chapter, or for the adoption of any ordinances, rules or regulations affecting taxicab operations.

28-13 *Payment of judgments and awards.*) All judgments and awards rendered by any court or commission of competent jurisdiction for loss or damage in the operation or use of any public passenger vehicle shall be paid within ninety days after they shall become final and not stayed by supersedeas. This obligation is absolute and not contingent upon the collection of any indemnity from insurance.

28-13.1 *Cancellation of Affiliate's Registration.*) If said affiliate abandons his residence, domicile or principal place of business in the city

of Chicago, or if any official notice or legal process cannot be served upon him at his last Chicago address registered in the office of the commissioner, and he fails to respond to such notice, or appear in answer to legal process at the time fixed therein, or if he denies liability on the ground that he was not the owner or operator of such vehicle, or if any judgment or award against said affiliate is not paid within the time provided in section 28-13, his registration shall be canceled and the public passenger vehicles of all his affiliated cabmen, or coachmen shall be declared unsafe by the commissioner and their licenses shall be suspended until their affiliation is severed by removal of all equipment and indicia of affiliation and cancellation of all agreements with said affiliate.

28-15 *Mandatory revocation of License.*) If any licensee abandons his residence, domicile or place of business in the city or if any official notice or legal process cannot be served upon him at his last Chicago address registered in the office of the commissioner and he fails to respond to such notice or appear in answer to legal process at the time fixed therein, or if any judgment or award against him is not paid within the time provided in section 28-13, or if any licensee shall be convicted of a felony or any criminal offense involving moral turpitude or if, while in charge of a public passenger vehicle as a chauffeur, he shall have in his possession or under his control any narcotic drugs, or shall solicit any person for transportation to any prostitute or house of ill-fame or disorderly place, or direct or inform any person where any prostitute, house of ill-fame or disorderly place is located, all his licenses shall be revoked.

Upon revocation of any license, the commissioner shall remove the license sticker emblem and the license card from the vehicle affected.

28-15.1 *Discretionary Revocation of License.*) If any public passenger vehicle license was obtained by application in which any material fact was omitted or stated falsely, or if any cabman or coachman, while in charge of a public passenger vehicle as a chauffeur, shall operate any public passenger vehicle in violation of the provisions of this chapter or of the rules and regulations of the commissioner relating to the administration and enforcement of the provisions of this chapter, the commissioner may recommend to the mayor that all public passenger vehicle licenses held by him be revoked and the mayor, in his discretion, may revoke said licenses.

28-18. *Livery Vehicles.*) No person shall be qualified for a livery vehicle license and a taxicab license at the same time; nor shall any coachman become affiliated or identified with any cabman or with an affiliate of any cabman.

No license for any livery vehicle shall be issued, except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing, the commissioner shall report to the council that public convenience and necessity require additional livery service. The provisions of section 28-22.1 relating to notice of hearing and the procedure at such hearing and thereafter, shall be applicable as nearly as they may be to proceedings relating to public convenience and necessity for additional livery service.

28-20 *Livery Advertising.*) The outside of the body of livery vehicles shall be solid black or blue-black in color, without any inscription thereon. No lights shall be attached to or exposed outside of such vehicle, unless required or permitted by the law of the State of Illinois regulating traffic.

It is unlawful for any person to hold himself out to the public by advertisement, or otherwise, to render any livery service, unless he is the coachman of a licensed livery vehicle, or for any coachman to use the words "cab," "cabman," "taxi," or "taxicab" in connection with or as part of his operation of such vehicle.

28-21 *Sightseeing Vehicles.*) Sightseeing vehicles shall not be used for transportation of passengers except on sightseeing tours or chartered trips. Passengers for such tours shall not be solicited upon any public way except at bus stands specially designated by the council for sightseeing vehicles, nor shall any person other than a coachman of such vehicle or his authorized agent solicit passengers for such tour.

28-22.1 *Public Convenience and Necessity.*) Not more than 4600 taxicab licenses shall be issued unless after a public hearing, the commissioner shall report to the council that public convenience and necessity require additional taxicab service. Notice of such hearing, stating the time and place thereof, shall be published in the official newspaper of the city at least 20 days prior to the hearing, and by mailing a copy thereof to all licensed cabmen. At such hearing the commissioner may call upon any person qualified to testify and offer evidence pertinent to the subject. Any licensed cabman, in person or by attorney, shall have the right to be heard. At any time and place fixed for such hearing it may be adjourned to another time and place without further notice.

In determining whether public convenience and necessity require additional taxicab service, due consideration shall be given to the following:

(1) The public demand for taxicab service;

(2) The effect of an increase in the number of taxicabs on the safety of existing vehicular and pedestrian traffic;

(3) The effect of increased competition on the revenue of cabmen from the operation of taxicabs and on the wages or compensation, hours and conditions of service of taxicab chauffeurs;

(4) The effect of a reduction, if any, in the level of net revenues from taxicab operations on reasonable rates of fare;

(5) Any other facts which the commissioner may deem relevant.

If the commissioner shall report that public convenience and necessity require additional taxicab service, the council, by ordinance, may change the maximum number of taxicab licenses fixed herein.

28-23 *Identification of Taxicab.*) Every taxicab shall have the public passenger vehicle license number and the cabman's name and telephone number painted in the center of the main panel of the rear doors of said vehicle. If the cabman is affiliated or identified with any person, as described in section 28-5, the affiliate's color scheme, trade name or emblem and telephone number shall be substituted and, without being limited thereto, any of said indicia of affiliation

shall be sufficient to establish the responsibility of the affiliate in the operation of said taxicab. All names and numbers shall be painted in plain Gothic letters and figures of three-eighths inch stroke and at least two inches in height. The ...blic vehicle license number assigned to any ...icab shall be assigned to the same vehicle or ... any vehicle substituted therefor by the *licensee.* No other name, number, emblem or advertisement of any kind excepting signs required by this chapter, official license emblems or plates shall be painted or carried so as to be visible on the outside of any taxicab.

28-28 *Taxicab Service.*) It is unlawful to refuse any person transportation to any place within the city in any taxicab which is unoccupied by a passenger for hire unless it is on its way to pick up a passenger in answer to a call for service or it is out of service for any other reason. When any taxicab is answering a call for service or is otherwise out of service, it shall not be parked at a cabstand, and a white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed *at its* windshield

SECTION 6. Sections 28-8, 28-17, 28-31, 28-31.1 and 28-31.2 are repealed.

SECTION 7. This ordinance shall become effective on January 1, 1960.

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Regulations Relating to Public Chauffeurs.

Alderman Sheridan moved to pass the pending proposed ordinance entitled "Amendments to Chapter 28.1 of the Municipal Code Relating to Public Chauffeurs". The motion prevailed by yeas and nays as follows:

Yeas—Aldermen D'Arco, Metcalfe, Holman, Miller, Condon, Lupo, Pacini, Nowakowski, Zelezinski, Egan, Burke, Kraka, Sheridan, Murray, Fitzpatrick, bell, Bonk, Janousek, Tourek, Lewis, Marzullo, Sain, T. F. Burke, Ronan, Keane, Sulaki, Brandt, Sande, Laskowski, Massey, Corcoran, Cullerton, Shapiro, Simon, Bell, Crowe, Bauler, Rosenberg, Weber, Young, Hirsh—41.

Nays—Aldermen Bohling, Hoellen, Sperling—3.

The following is said ordinance as passed:

AMENDMENTS TO CHAPTER 28.1 OF THE MUNICIPAL CODE RELATING TO PUBLIC CHAUFFEURS.

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Section 28.1-10 of the Municipal Code of Chicago is amended by striking out the second paragraph in said section and substituting therefor the following:

If any person has obtained a public chauffeur's license by application in which any material fact was omitted or stated falsely, or if any chauffeur shall become unfit to operate a public passenger vehicle on account of any infirmity of body or mind or because of addiction to the use of drugs or intoxicating liquors, or shall violate any criminal law which, *if convicted for such offense,* would disqualify any applicant for a chauffeur's license, *or shall have in his possession, or under his control, any narcotic drug while in control of a public passenger vehicle,* or shall violate any of the provisions of chapter 28 of this code or of this chapter, the commissioner may recommend to the mayor that his license shall be revoked and the mayor, in his discretion, may revoke such license. Upon suspension or revocation of a public chauffeur's license the licensee shall surrender his license certificate to the commissioner.

SECTION 2. Section 28.1-12 of said Code is amended by striking out the last paragraph in said section and substituting therefor the following:

No chauffeur shall solicit patronage for any restaurant, night club, cabaret, dance hall, hotel, public resort, place of amusement, or solicit any person for transportation to any prostitute or house of ill-fame or disorderly place or direct or inform any *person* where such prostitute, house of ill-fame or disorderly place is located or transport any passenger to any place other than the destination to which the passenger has requested transportation.

SECTION 3. This ordinance shall be effective upon its passage and due publication.

—

Office of Public Vehicle License Commissioner.

Alderman Sheridan moved to pass the pending proposed ordinance entitled "Amendments to Chapter 21 of the Municipal Code Relating to the Office of the Public Vehicle License Commissioner". The motion prevailed by yeas and nays as follows:

Yeas—Aldermen D'Arco, Metcalfe, Holman, Miller, Condon, Lupo, Pacini, Nowakowski, Zelezinski, Egan, J. P. Burke, Kraka, Sheridan, Murray, Fitzpatrick, Campbell, Bonk, Janousek, Tourek, Lewis, Marzullo, Sain, T. F. Burke, Ronan, Keane, Sulaki, Brandt, Sande, Laskowski, Massey, Corcoran, Cullerton, Shapiro, Simon, Bell, Crowe, Bauler, Rosenberg, Weber, Young, Hirsh—41.

Nays—Aldermen Bohling, Hoellen, Sperling—3.

The following is said ordinance as passed:

AMENDMENTS TO CHAPTER 21 OF THE MUNICIPAL CODE RELATING TO THE OFFICE OF THE PUBLIC VEHICLE LICENSE COMMISSIONER.

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Section 21-1 of the Municipal Code of Chicago is amended by striking out the first sentence of said section and substituting therefor the following:

There is hereby created the office of public vehicle license commissioner who shall be in control of the administration and enforcement of the provisions of this code and all ordinances relating to public passenger vehicles.

SECTION 2. Section 21-3 of said code is amended by striking out the first sentence of said section and substituting therefor the following:

The public vehicle license commissioner shall keep a register containing the names and Chicago addresses of all cabmen, coachmen *and their affiliates,* a description of their public passenger vehicles with their license numbers and a complete record of all inspections of such vehicles and their equipment.

[fol. 33] EXHIBIT B.

Regulations Amended Relating to Public Passenger Vehicles.

On motion of Alderman Sheridan the City Council took up for consideration the report of the Committee on Local Transportation deferred and published on May 29, 1963, pages 333-334, recommending that the City Council pass a proposed ordinance transmitted with the committee's report [printed in Committee Pamphlet No. 1] to amend Chapter 28 of the Municipal Code of Chicago relating to public passenger vehicles.

On motion of Alderman Sheridan said proposed ordinance was *Passed,* by yeas and nays as follows:

Yeas—Alderman Harvey, Metcalfe, Holman, Despres, Miller, Bohling, Condon, Lupo, Buchanan, Nowakowski, Zelezinski, Healy, J. P. Burke, Krska, Sheridan, Chew, Murray, Fitzpatrick, Campbell, Janousek, Tourek, Zydlo, Tomaso, Ronan, Keane, Sulski, Brandt, Laskowski, Massey, Corcoran, Cullerton, Shapiro, Kaplan, Goldberg, Kerwin, O'Rourke, Wigoda—37.

Nays—Alderman Marzulla, Sain, Sande, Scholl, Fifielski, Hoellen, Sperling—7.

Alderman Janousek moved to *Reconsider* the foregoing vote. The motion was Lost (Alderman Bohling and Alderman Sperling voting "Yea").

The following is said ordinance as passed:

Be It Ordained by the City Council of the City of Chicago:

Section 1. Section 28-1 of the Municipal Code of Chicago is amended to read as follows:

[fol. 34] 28-1. *Whenever used in this ordinance:*

(a) the word "City" means the City of Chicago;

(b) the word "Council" means the City Council of the City of Chicago;

(c) the words "public passenger vehicle" mean a motor vehicle, as defined in the motor vehicle law of the State of Illinois, which is used for the transportation of passengers for hire, excepting those devoted exclusively for funeral use or in operation of a metropolitan transit authority or public utility under the laws of Illinois;

(d) the word "taxicab" means a public passenger vehicle for hire only at lawful rates of fare which, *when it is being operated between a point of origin and a destination within the corporate limits of the City are* as recorded and indicated by a taximeter;

(e) the word "taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers;

(f) the word "medallion" means a metal plate, furnished by the Commissioner, for display on the outside hood of a taxicab, of such size and shape and bearing such impression thereon as shall be required by this ordinance and by the Commissioner;

(g) the word "licensee" means any person who is the owner of one or more licenses issued pursuant to this ordinance;

(h) the word "person" includes a natural person, partnership, firm or corporation;

(i) the word "Commissioner" means the Public Vehicle License Commissioner or *such* other body or officer *as may have* supervision over taxicab operations in the City;

(j) the words "operating expenses" mean all charges, costs and expenses properly incurred for any given

[fol. 35] *period in accordance with good accounting practice in connection with a licensee's taxicab operations;*

(k) the word "Cabman" means a person engaged in business as proprietor of one or more taxicabs;

(l) the word "Chauffeur" means the driver of a public passenger vehicle licensed by the City of Chicago as a public chauffeur;

(m) the word "Coachman" means a person engaged in business as proprietor of one or more livery vehicles, sight-seeing vehicles or terminal vehicles;

(n) the words "Livery vehicle" mean a public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance;

(o) the words "Sightseeing vehicle" mean a public passenger vehicle for hire principally on sightseeing tours at a charge or fare per passenger for each tour fixed by agreement in advance or for hire otherwise at a charge for each vehicle per trip fixed by agreement in advance.

Section 2. The Municipal Code of Chicago is amended by adding Section 28-1.1 as follows:

28-1.1 Subject to the conditions and limitations of this chapter, exclusive permission and authority are hereby granted to the licensees hereunder and their assigns to operate the taxicabs licensed hereunder upon the public streets and other public ways within the corporate limits of the City unless terminated or revoked as hereinafter provided.

It shall be unlawful and the City will not permit any public passenger vehicle not licensed hereunder as a taxicab to solicit taxicab business within the City of

Chicago or to accept for transportation any passengers within the City of Chicago excepting only passengers destined to the community in which such public passenger vehicle is licensed and then only when such transportation has been arranged for in advance by telephonic or written order.

[fol. 36] Section 3. Section 28-7 of the Municipal Code of Chicago is amended to read as follows:

28-7. The annual fee for each public passenger vehicle license of the class herein set forth is as follows:

Livery vehicle ..... for each vehicle designed or used for carrying not more than seven persons, and $5.00 more for each additional person.	$ 40.00
Sightseeing vehicle	150.00
Taxicab	60.00
Terminal vehicle ..... for each vehicle designed or used for carrying not more than seven persons, and $5.00 more for each additional person.	40.00

Said fee shall be paid in advance when the license is issued and shall be applied to the cost of issuing such license, including, without being limited to, the investigations, inspections and supervision necessary therefor, and to the cost of regulating all operations of public passenger vehicles as provided in this chapter.

Nothing in this section shall affect the right of the city to impose or collect a vehicle tax and any occupational tax, as authorized by the laws of the State of Illinois, in addition to the license fee herein provided.

Section 4. Section 28-9 of the Municipal Code of Chicago is amended to read as follows:

28-9. The *relationship* between the licensee of any *taxicab* and the driver thereof shall be *such as they mutually may agree upon by contract, and may be expressed or implied, provided that the driver thereof is duly licensed by the City as a public chauffeur as required by ordinance. It shall be lawful for a licensee to* lease or *contract for the independent operation or management of the licensee's operation of any taxicab licensed hereunder for any consideration whatsoever.* No person *other than a* chauffeur shall *drive* [fol. 37] *such vehicle* for the transportation of passengers for hire within the city. There shall be no discrimination against any person employed or seeking employment on account of race, color, religion, national origin or ancestry.

Section 5. Section 28-9.1 of the Municipal Code of Chicago is amended to read as follows:

28-9.1. *The licenses and the rights and privileges herein granted shall be assignable provided that before any such assignment shall become effective the Commissioner shall find that the assignee is qualified to comply with the terms and conditions of this ordinance and has undertaken to be and become liable for all of the liabilities of the assignor arising out of the operation of the taxicab, the license of which is so assigned, and the original or a certified executed copy of the assignment and undertaking shall be filed with the Commissioner. In the event of a licensee's death, the assignment shall be made by his legal representatives.*

In determining whether a proposed assignee is qualified, the Commissioner shall take into consideration: (a) the character and reputation of the assignee or its members or officers as law abiding citizens;

(b) the financial ability of the assignee to render lawful, safe, suitable and comfortable service and to maintain or replace the equipment for such service;

(c) the financial responsibility of the assignee to maintain insurance for the payment of personal injury, death, and property damage claims;

(d) the color scheme proposed for use to prevent deception or confusion as to the ownership of the taxicab employed and the identity of the person or persons responsible for the service.

If *the assignee is found to be* qualified the license shall be transferred to him by the Commissioner, subject to payment of a transfer fee of $50.00 and approval by the Commissioner of the insurance required by Sections 28-12 or 28-12.1.

[fol. 38] Section 6. Section 28-13 of the Municipal Code of Chicago is amended to read as follows:

28-13. *Every licensee shall pay each judgment or award for loss or damage in the operation or use of a taxicab rendered against such licensee* by any court or commission of competent jurisdiction within ninety days after its judgment or award shall have become final and not stayed by supersedeas. *If any such judgment shall not be so paid, the Mayor shall revoke the license of the taxicab concerned.*

Section 7. Section 28-15.1 of the Municipal Code of Chicago is amended to read as follows:

28-15.1. *In the event that the Commissioner, after investigation and hearing, shall determine that any licensee has obtained any license for any taxicab by fraud or false representation or wilful misstatement of material fact, or in case any licensee shall fail to carry out any representation made to the Commissioner before the issuance of such license, or shall wilfully make any material misstatement of fact on any state-*

ment filed with the Commissioner, or if any cabman or coachman, while in charge of a public passenger vehicle, as a chauffeur, shall operate any public passenger vehicle in violation of the provisions of this chapter or of the rules and regulations of the Commissioner relating to the administration and enforcement of the provisions of this chapter, the Commissioner may recommend to the Mayor that all public passenger vehicle licenses held by him be revoked and the Mayor, in his discretion, may revoke said licenses.

Section 8. Section 28-22 of the Municipal Code of Chicago is amended to read as follows:

28-22. Every taxicab shall be operated regularly to the extent reasonably necessary to meet the public demand for service. If the service of any taxicab is discontinued for any reason except on account of strike, act of God, *shortages of labor, gasoline or other necessary* [fol. 39] *materials* or cause beyond the control of the cabman, the Commissioner may give written notice to the cabman to restore the taxicab to service, and if it is not restored within five days after notice, the Commissioner may recommend to the Mayor that the taxicab license be revoked and the Mayor, in his discretion may revoke same. *Provided, however, that whenever the total operating expenses except Federal income taxes, of all taxicab licensees shall for the previous fares, any licensee may elect to temporarily discontinue operation of such number of taxicabs as herein provided. In determining the number of such taxicabs to be discontinued temporarily, the following formula shall be used: in the event the operating expenses, as reflected by the reports required of the licensees, every six months, equal 87½% of such gross fares, licensee may lay up not to exceed 10% of its total licensed taxicabs; if such expenses equal 89% of such gross fares, the licensees may lay up to 20% of its total licensed*

taxicabs; if such expenses equal 90½% or more of such gross fares, it may lay up to 25% of its licensed taxicabs.

Section 9. Section 28-22.1 of the Municipal Code of Chicago is amended to read as follows:

28-22.1. *(a) The maximum number of taxicab licenses to be issued shall be 4600, public convenience and necessity and the safety of existing vehicular and pedestrian traffic requiring such limitation. Each person who is, on the effective date of this ordinance, the owner of one or more uncancelled, unsurrendered and unrevoked licenses issued for the year 1963 under or pursuant to the ordinances in effect on the date of passage of this ordinance, shall be entitled to one license hereunder for each such license now owned by him.*

(b) On January 1, 1964 (or as soon thereafter as may be convenient) and on each January 1 thereafter, the Commissioner, upon application therefor, shall issue to each taxicab licensee hereunder, one such license for each unrevoked, uncancelled, and unsur- [fol. 40] *rendered taxicab license owned by such licensee on the December 31 next preceding.*

(c) The Council, through its Committee on Local Transportation may, and at the request of the holders of a majority of the licenses at any time outstanding shall within sixty days after such request, hold hearings not oftener than once in each period of twelve consecutive months to determine whether public convenience and necessity may require additional taxicab service. At such hearings, the Committee shall consider:

(1) the effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic;

(II) the public demand for the service;

(III) the effect of additional taxicabs on the wages or other compensation, hours and conditions of service of licensed drivers of vehicles then operating and previously licensed;

(IV) the effect of an increase of competition with existing service on the cost of rendering such service;

(V) the effect of additional licenses on the rates of fare which the Council may be required to revise under Section 28-30 hereof.

Notices of such public hearings containing the time and place thereof shall be published and a copy of such notices shall be mailed to every licensee. At such hearings each licensee shall submit a sworn statement of all gross fares collected and of all operating expenses exclusive of Federal income taxes incurred during the immediately preceding period of twelve full calendar months. The Committee may continue any public hearing from time to time without further notice by publication. At such hearings, testimony shall be given under the oath or affirmation of each witness. At any such hearing, any licensee, in person or by attorney, shall have the right to examine or cross-examine any applicant or witness and to introduce evidence. [fol. 41] *At the conclusion of such hearings, the Committee shall report to the Council its findings and recommendations, if any. The Council shall then determine whether any additional licenses are required to be issued in order to satisfy the public convenience and necessity therefor. In no event shall the Council authorize the issuance of any additional licenses unless during the twelve months period considered by said Committee at said hearings the combined total operating expenses of all licensees, exclusive of Federal income taxes, submitting the aforesaid sworn statements (provided they*

constitute the holders of at least a majority of all outstanding licenses) have been not more than 84% of their combined gross fares for such period and the Council shall have determined to allow the existing rates of fare to remain unchanged as permitted by Section 28-30 hereof. The number of additional licenses, the issuance of which may be authorized by the Council at any time, shall be limited to 1½% of the total number of licenses then outstanding for each 1½% by which the aforesaid combined total expenses is less than 86% of the aforesaid combined gross fares.

(d) If the Council shall authorize the issuance of additional licenses, they shall be issued on application:

(I) to licensees then holding more than one license, the same proportion of the number of licenses to be issued as the number of licenses then held by such licensee bears to the total number of licenses then outstanding, giving no effect to fractions of licenses; and

(II) the balance to individual applicants who are not then licensees, one license to each on the basis of whichever applicants are best qualified in the opinion of the Commissioner.

Section 10. Section 28-29 of the Municipal Code of Chicago is amended to read as follows:

28-29. Group riding is prohibited in taxicabs, except [fol. 42] as directed by the passenger first engaging the taxicab. Not more than *six* passengers shall be accepted for transportation on any trip; provided that additional passengers under twelve years of age accompanied by an adult passenger shall be accepted if the taxicab has seating capacity for them.

Section 11. Section 28-30 of the Municipal Code of Chicago is amended to read as follows:

28-30. *(a) Commencing with the effective date of this ordinance,* the rates of fare for taxicabs *while being operated between a point of origin and a destination within the corporate limits of the City shall be as set forth in the following schedule, which rates are hereby declared to be just and reasonable:*

For the first ¼ mile or fraction thereof	40¢
For each additional 2/5 mile or fraction thereof	10¢
For each *two* minutes of waiting time	10¢
For each additional passenger of 12 years or more	20¢

Waiting time shall include the time beginning *two* minutes after call time at the place to which the taxicab has been called, when it is not in motion, the time consumed by unavoidable delays at street intersections, bridges or elsewhere and the time consumed while standing at the direction of a passenger.

Every passenger under twelve years of age when accompanied by an adult shall be carried without charge.

Ordinary hand baggage of passengers shall be carried without charge.

Immediately on arrival at the passenger's destination it shall be the duty of the chauffeur to throw the taximeter lever to the non-recording position and to call the passenger's attention to the fare registered.

It is unlawful for any person to demand or collect any fare for taxicab service which is more or less than the rates established by the foregoing schedule, or for any passenger to refuse payment of the fare so registered.

[fol. 43] *(b) The Council may from time to time revise the rates of fare by general ordinance in conformity with the provisions hereinafter set forth. Rates of fare shall be deemed just and reasonable when the combined total of all operating expenses exclusive of Fed-*

eral income taxes of licensees hereunder during any period of twelve consecutive months approximate 86% of their combined gross fares for such period. The Council, through its Committee on Local Transportation, may, and upon the application of the holders of not less than a majority of the licenses issued hereunder, shall, within sixty days after such application, hold hearings (but not oftener than once in each period of twelve consecutive months) to determine whether a revision of the rates of fare is necessary. At such hearings each licensee shall submit a sworn statement of all gross fares collected and of all such expenses incurred during the immediately preceding period of twelve full calendar months. Said Committee shall report to the Council the combined gross fares and the combined total of all such expenses for such period of all licensees (or if all of the licensees have not submitted such statements, of those licensees submitting the same provided they constitute the holders of at least a majority of all outstanding licenses) and the amount of the difference, of any, between such combined expenses and 86% of such combined gross fares. If the combined total of such expenses has exceeded 86% of such combined gross fares, the Council shall increase the rates of fare by 5¢ per trip for each 1½% portion of such excess over 86%. If such combined expenses have been less than 86% of such combined gross fares, the Council may either decrease the rates of fare by 5¢ per trip for each 1½% portion of such deficiency below 86%, or the Council may allow the rates of fare to remain unchanged and may authorize, under Section 28-22.1 hereof, the issuance of additional taxicab licenses in an amount aggregating 1½% of the total number of licenses then outstanding for each 1½% portion of such deficiency below 86%.

[fol. 44] *Any revision of rates of fare may be made by a change in the charge for or the length of the first designated portion of the trip, or by a change in the*

charge for the balance of the trip, for waiting time or for each additional passenger or by any combination of such charges. In making any such revision, the Council may presume the average length of a trip to be as established by current records of the licensees.

Section 12. Section 28-30.1 of the Municipal Code of Chicago is amended to read as follows:

28-30.1. Every cabman, *corporation* and affiliate shall keep and provide accurate books and records of account of his operations at his place of business in the city. On or before May 1 of each year, every cabman, *corporation* and affiliate shall file with the Commissioner a profit and loss statement for the preceding calendar year, showing all his earnings and expenditures for operation, maintenance and repair of property, depreciation expense, premiums paid for workmen's compensation and public liability insurance, and taxes paid for unemployment insurance and social security, and all state and local license fees, property taxes and Federal income taxes, and a balance sheet taken at the close of said year.

The Commissioner, or the authorized committee of the Council, shall have access to the property, books, contracts, accounts and records during normal business hours at said place of business, for such information as may be required for the effective administration and enforcement of the provisions of this chapter, or for the adoption of any ordinances, rules or regulations affecting taxicab operations.

In addition to the foregoing reports, each cabman shall within thirty days after the six months' period ended December 31 and within thirty days after the six months' period ended June 30 of each year file a sworn statement with the Commissioner showing his gross fares collected and his operating expenses for the six months immediately preceding said dates.

[fol. 45] Section 13. The Municipal Code of Chicago is amended by adding Section 28-31.1 to read as follows:

28-31.1. Nothing in this ordinance shall be construed to limit the City in the exercise of its police powers and the City hereby expressly reserves the right to pass all reasonable ordinances and regulations affecting the licensees which may be necessary to promote or secure health, safety, morals, comfort, and general welfare; provided, however, that no ordinance or regulations shall hereafter authorize the issuance of any license for a taxicab nor shall any such license hereafter be issued except upon transfer or to permit replacement of a taxicab or in the annual renewal of such license and except as provided in Section 28-22.1 hereof.

Section 14. The Municipal Code of Chicago is amended by adding Section 28-31.2 to read as follows:

28-31.2. No license which has been revoked, surrendered, cancelled or not applied for within a period of seven months after such license application is due, shall hereafter be issued.

Section 15. The Municipal Code of Chicago is amended by adding Section 28-33 to read as follows:

28-33. This ordinance shall not be amended during the period of five years from its effective date except in accordance with the provisions of Sections 28-7, 28-9, 28-9.1, 28-22, 28-22.1, 28-30 and 28-31.2 hereof and during the period of one year from its effective date with respect to any other provisions hereof.

Section 16. The Municipal Code of Chicago is amended by adding Section 28-34 to read as follows:

28-34. Nothing in this ordinance shall be construed to alter or amend the ordinance of March 9, 1962, appearing at pages 6882-6885 of the Journal of Proceedings

of the City Council of that date, being Section 28-28 of the Municipal Code of Chicago, governing the rates of fare and conditions of operation of taxicabs picking [fol. 46] up passengers at Chicago-O'Hare International Airport for destinations outside the City, nor to affect the rights of licensees relating to fares to be charged to passengers whose point of origin or destination is outside the City.

Section 17. The Municipal Code of Chicago is amended by adding Section 28-36 to read as follows:

28-35. The validity of any section or part of any section of this ordinance shall not affect the validity of any other section or part thereof.

Section 18. The Municipal Code of Chicago is amended by adding Section 26-36 to read as follows:

28-36. This ordinance shall be effective upon its passage and publication.

Committee on Local Transportation.

"Terminal Vehicle" Included in Definition of Public Passenger Vehicles.

The Committee on Local Transportation submitted a report recommending that the City Council pass the following proposed ordinance transmitted therewith (which was referred to the committee on May 27, 1964):

Be It Ordained by the City Council of the City of Chicago:

Section 1. Section 28-1 of the Municipal Code of Chicago is amended by adding thereto the following:

(p) the words "Terminal vehicle" means a public passenger vehicle which is used exclusively by a coachman under contract with railroad or steamship carriers for the transfer of their passengers and hand baggage en route in interstate travel

between railroad terminals and steamship docks pursuant to through route published tariffs.

Section 2. This ordinance shall become effective upon its passage.

[fol. 47] On motion of Alderman Sheridan the foregoing proposed ordinance was *Passed,* by yeas and nays as follows:

Yeas—Alderman Parrillo, Harvey, Metcalfe, Holman, Despres, Miller, Bohling, Condon, Lupo, Buchanan, Danaher, Zelezinski, Healy, J. P. Burke, Krska, Sheridan, Chew, Murray, Fitzpatrick, Campbell, Yaksic, Tourek, Collins, Marzullo, Zydlo, Sain, Tomaso, T. F. Burke, Ronan, Keane, Sulski, Laskowski, Massey, Cullerton, Shapiro, Kaplan, Scholl, Goldberg, Bauler, Rosenberg, Fifielski, Kerwin, Hoellen, O'Rourke, Wigoda, Sperling—46.

Nays—None.

IN THE UNITED STATES DISTRICT COURT

60-C-1509

AMENDED PARAGRAPH 3 TO SECOND AMENDED COMPLAINT—Filed November 24, 1964

Comes now the plaintiff, Railroad Transfer Service, Inc., a Delaware corporation, by its attorneys Axelrod, Goodman & Steiner and Norman H. Nachman, and files this an amendment to Paragraph 3 of its Second Amended Complaint, and in support thereof states as follows:

1. That as amended, Paragraph 3 of its Second Amended Complaint is as follows:

"3. That twenty-one interstate railroads (Terminal Lines), common carriers under Part 1 of the Interstate Commerce Act (Act) 49 U. S. C. A. 1-27 and public utilities under the Illinois Public Utilities Act in accordance with the law contracted with plaintiff to perform as the Terminal

Lines' sole agent the transfer of passengers and their baggage holding through tickets, between eight (8) Chicago railroad stations in cases where the passengers arrive at [fol. 48] one railroad terminal and must leave Chicago by railroad from another railroad station to continue their journey for an interstate point beyond Chicago in accordance with the through railroad ticket issued by the originating railroad, pursuant to their duty under Section 1 (6) of the Interstate Commerce Act, to perform all interstate transportation service only as a filed tariff railroad transportation service that over 90 per cent of all such through passenger service is in interstate commerce; that each of the railroad terminals involved is located in downtown Chicago and that the plaintiff as the (sole) agent of the Terminal Lines provides the transfer of intransit passengers and their baggage holding a through railroad ticket coupon from the incoming railroad station to the outgoing railroad station in the through or continuous passenger railroad transportation whenever the railroads involved do not operate to and from the same station; that plaintiff devotes all its purposely-built passenger motor vehicles operating exclusively to the performance of its business as the Terminal Lines Agent pursuant to applicable tariffs on file with the State of Illinois and the Interstate Commerce Commission, pursuant to law, and plaintiff receives its compensation from the twenty-one railroads in accordance with the lawfully filed tariffs.

The required passenger and baggage transfer service to which the holder of through passenger transportation is entitled, and which is provided by plaintiff under its contracts with the railroads, embraces three separate categories of transfer service by motor vehicles, to wit:

> (a) The transportation of the through passengers, with or without accompanying hand baggage, from the incoming station to the outgoing station shown on the transfer coupon issued to him as part of his through ticket by the railroad for that purpose upon delivery of the coupon for cancellation to the railroad's agent in

[fol. 49] the incoming station. Over 99 per cent of all coupon holders are transported with accompanying hand baggage and in the case of 65 per cent of all coupon holders, such accompanying hand baggage consists of more than one article.

(b) The interstation transportation of the hand baggage of the coupon holder, unaccompanied by him, upon delivery of his coupon for cancellation to the railroad's agent at the incoming station. For this purpose the passenger motor vehicle transporting coupon holder on some suitable vehicle may be used;

(c) The interstation transportation of baggage checked through on the passenger's ticket. Checked baggage is handled in motor vehicles separate from the motor vehicles in which the coupon holders are transferred; and the required transfer is carried out by the railroads without action by the arriving through passenger.

Since October 1, 1955 to the present time, and for the effective period of its Terminal Lines Agency Agreement, plaintiff has devoted and will devote its purposely-built passenger vehicles operating as exclusive Agent for the Terminal Lines completing through passenger transportation service through Chicago (through service) as the sole connecting carrier in the Chicago terminal area for coupon holding passengers only, and will operate its vehicles as sole Agent for The Terminal Lines of the required transportation of interstation passengers and hand baggage service under direction and control of The Terminal Lines as required by tariffs filed with the Interstate Commerce Commission and State Commission.

That the above described service performed by plaintiff as sole agent for The Terminal Lines has continued under a year-to-year Agency Agreement between plaintiff and the railroads; that said railroads have advised plaintiff [fol. 50] that they will continue as sole Agents for the Ter-

minal Lines for so long as plaintiff is able to perform the required services satisfactorily.

Axelrod, Goodman & Steiner, By Arnold L. Burke,
By Norman H. Nachman, Attorneys for Plaintiff.

Axelrod, Goodman & Steiner, 39 South LaSalle Street, Chicago, Illinois 60603, CEntral 6-9375.

Norman H. Nachman, 38 South Dearborn Street, Chicago, Illinois 60603, ANdover 3-1480.

[fol. 51]

IN THE UNITED STATES DISTRICT COURT

60-C-1509

MOTION TO STRIKE THE SECOND AMENDED COMPLAINT AND TO DISMISS THE ABOVE ENTITLED CAUSE—Filed January 7, 1965

Now comes the defendant, The City of Chicago, a Municipal Corporation, by its attorneys, James G. O'Donohue, Acting Corporation Counsel and John O. Touhy, Assistant Corporation Counsel, and on its behalf and on behalf of all of the other defendants herein, moves this Honorable Court to strike plaintiff's Second Amended Complaint and to dismiss the above entitled cause for the following reasons:

A. As to Lack of Jurisdiction.

The sole ground for Federal jurisdiction of the above entitled cause heretofore asserted by the plaintiff in its First Amended Complaint, the legal sufficiency of which Complaint was ruled upon by this Court in its judgment of November 27, 1963, from which an appeal was subsequently pursued to the United States Court of Appeals, was Title 28 USCA, Section 1331 which requires that the amount in controversy must exceed $10,000.00, exclusive of interest and costs. In plaintiff's Second Amended Complaint, although plaintiff again relies on Section 1331, plaintiff also asserts that jurisdiction of the above entitled cause is also

conferred upon this Court by virtue of Section 1337 of the United States Code in that "District Courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

1. The Second Amended Complaint fails to allege a suffi-[fol. 52] cient basis for Federal jurisdiction under Title 28 USCA, Section 1331. Section 1331 requires that the amount in controversy must exceed $10,000.00 "exclusive of interest and costs." Paragraph I of the Second Amended Complaint merely states that the amount in controversy exceeds $10,000.00, and therefore, on its face fails to properly plead grounds upon which to base jurisdiction under Section 1331.

2. Even if the Second Amended Complaint were amended to state that the matter in controversy exceeds the sum of $10,000.00 "exclusive of interest and costs", a sufficient basis for Federal jurisdiction under Section 1331 is lacking. The plaintiff's business is the transportation of passengers and baggage by its vehicles between interstate railroad terminals in Chicago. The Second Amended Complaint admits that plaintiff's right to operate these terminal vehicles depends upon the contract granted plaintiff by the railroad carriers using these terminals. The Second Amended Complaint alleges the existence of only a year to year contract between plaintiff and the railroads. Said complaint fails to specify the number and kind of terminal vehicles being operated by the plaintiff which are subject to the licensing requirements of the ordinance being challenged, and fails in all other respects to allege any facts to establish that the amount in controversy satisfies the jurisdiction prerequisite of Section 1331 relied upon by the plaintiff. It cannot fairly be said, therefore, taking the Second Amended Complaint in its entirety, that said complaint *on its face* satisfied the plaintiff's burden of establishing the prerequisite statutory jurisdictional amount in controversy. Moreover, it conclusively appears from Exhibit A, attached to and made a part of this motion, and from the orders entered

by this Court during the course of this litigation requiring the plaintiff to deposit with the Clerk of the Court the amount of the license fees or taxes required to be paid [fol. 53] by the plaintiff under the ordinance being challenged, that the prerequisite statutory jurisdictional amount in controversy in fact does not exist. The total amount of the annual license fees or taxes required to be paid by the plaintiff for the year 1960 under the ordinance being challenged for the number and kind of terminal vehicles then operated by the plaintiff was $1,630.00, which amount was paid by the plaintiff to the defendant prior to the institution of this litigation. The total amount of such license fees or taxes for the years 1961, 1962, 1963 and 1964 was likewise $1,630.00 for each of these four years. For each of the years 1961, 1962 and 1963 $1,630.00 was deposited with the Clerk of this Court pursuant to the orders of this Court during the course of this litigation.

The amount in controversy thus is $4,890.00. Even if the 1964 license fees of $1,630.00 which have not been deposited with the Clerk of this Court, were also deposited with the Clerk the amount in controversy would only be $6,520.00. Under Title 28 USCA, Section 1331, the license fee or tax required by the ordinance being less than $10,000.00 required under the provisions of Title 28, USCA, Section 1331, the plaintiff fails on the record now before the Court to establish jurisdiction in accordance with Rule 8 (a) (1) of the Rules of Civil Procedure for the United States District Court and said Section 1331.

3. Nowhere in the Second Amended Complaint has the plaintiff alleged that the City of Chicago or any other defendant has adopted or is about to adopt the construction of the relevant sections of the ordinance that plaintiff offers in paragraph 9 of said complaint. Moreover, assuming the defendants do in the future adopt such a construction of the ordinance, the mere recital in paragraph 9 of the Second Amended Complaint of the legal conclusion that "said ordinance gives the Commissioner and/or the Mayor discretionary authority to revoke and suspend

[fol. 54] and/or deny licenses to plaintiff without hearing, and without relationship to the safety of plaintiff's operations" and that therefore the ordinance constitutes an arbitrary and capricious harassment of plaintiff, and creates an undue burden, hindrance and obstruction of interstate commerce and prevents plaintiff from providing service in interstate commerce, by itself is insufficient as a matter of law without further allegations of facts showing that the Commissioner recommended or threatened to recommend to the Mayor the revocation of any of plaintiff's public passenger vehicle licenses, or that the Mayor revoked or threatened to revoke any of such licenses, or that the Commissioner or some other defendant acted or threatened to act to interfere with or stop plaintiff's interstate operations. Said complaint utterly fails to allege any such facts. Paragraph 9 of said complaint as well as the balance of the complaint, standing alone without any further allegations of such facts concerning implementation of the ordinance to the prejudice of the plaintiff, therefore, is insufficient in law to constitute a justifiable controversy or a controversy within the meaning of Title 28 USCA, Section 1331. Accordingly, the Second Amended Complaint is premature on its face both with regard to the injunctive relief and declaratory judgment sought.

4. On August 19, 1960, the Public Vehicle License Commissioner of the City of Chicago demanded that plaintiff immediately make application for licenses for its terminal vehicles and comply with the provisions of the ordinance in question. (See Exhibit A, the Affidavit of the Public Vehicle License Commissioner of the City of Chicago, attached hereto and made a part hereof.) Pursuant to such demand the plaintiff on August 26, 1960, made application and made full payment in the amount of $1,630.00 for twenty terminal vehicle licenses for the year 1960, acknowledging that such application and payment were [fol. 55] "representing the license fee required under Chapter 28 of the City of Chicago Municipal Code as amended." (See Exhibit A hereto.) At such time the plaintiff had

fully complied with all of the requirements of the ordinance and the regulations of the Public Vehicle License Commissioner referred to in paragraphs 8, 16 and 17 of the Second Amended Complaint by filing a list of equipment, a financial statement, a corporate certificate of authorization, a certificate of insurance and its corporate charter, and by performing all other acts necessary to satisfy such requirements. (See Exhibit A.) In view of plaintiff's aforesaid full compliance with the ordinance it was, therefore, impossible for the defendants to do any act whatsoever to the prejudice of the plaintiff at the time of the filing of the original Complaint. Since the filing of the original Complaint to date, the plaintiff likewise has substantially complied with all of the requirements of the ordinance and regulations of the Public Vehicle License Commissioner referred to in paragraphs 8, 16 and 17 of the Second Amended Complaint (the license fees or taxes for the years 1961, 1962 and 1963, however, being deposited with the Clerk of this Court pursuant to various orders of this Court pending the outcome of this litigation instead of being paid directly to the defendant City of Chicago.) (See Exhibit A.)

It has been impossible, therefore, for the defendants to do any act whatsover to the prejudice of the plaintiff at the time of the filing of the original Complaint or during the course of the subsequent litigation to date with respect to the provisions of the ordinance and the regulations of the Public Vehicle License Commissioner referred to in paragraphs 8, 16 and 17 of the Second Amended Complaint. Accordingly, no justifiable controversy, or a controversy within the meaning of Title 28 USCA, Section 1331, exists with reference to said provisions of the ordinance and said regulations of the Public Vehicle License Commissioner, [fol. 56] and the Second Amended Complaint is premature both with regard to the injunctive relief and declaratory judgment sought.

5. The Second Amended Complaint fails to establish that jurisdiction of the above entitled cause can rest upon Section 1337 of the United States Code.

Said Section states that the district courts shall have original jurisdiction of any civil action on proceeding under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies. Plaintiff asserts in paragraph 1 of Plaintiff's Second Amended Complaint that it operates pursuant to Title 49, Section 1(4), 3(4), 15(3) and 302(c); and, therefore, this court has jurisdiction of the above entitled cause under Section 1337 of the United States Code. Plaintiff also states that it is subject to rules and regulations of the Interstate Commerce Commission specifically that pertaining to hours of service for its employees and the safety and operation of its vehicles and their maintenance, citing in addition to the above sections of title 49, Sections 1(3)(a), 304(a)(1) and (2), 314 and 320 of said title. Plaintiff also states that by virtue of an order of the Interstate Commerce Commission dated February 17, 1961 (Exhibit A to Second Amended Complaint), it is subject to said Commission's rules pertaining to safety and maintenance of motor carriers.

Plaintiff fails to allege that or how its compliance with any ordinance of the City of Chicago would in any way prevent or hinder it from complying with any of the above cited statutes or Interstate Commerce Commission regulation. Only in one paragraph (9) does the Second Amended Complaint even allege how or in what way any of the numerous provisions of Chapter 28 of the Municipal Code of Chicago could interrupt plaintiff's interstate service. Plaintiff makes such allegation based on its construction, with [fol. 57] which defendants do not agree of an unspecified section of Chapter 28 which plaintiff concludes gives the defendant Public Vehicle License Commissioner and or the defendant Mayor discretionary authority to revoke, suspend and or deny licenses to plaintiff without hearing and without relationship to the safety of its operations. Said allegation cannot be the basis for jurisdiction under Section 1337 since as this Court observed in its opinion of September 9, 1963 in the above entitled cause, "Defendant

now concedes that . . . that under the ruling in the *Atchison* case, the City would have no right to issue a cease and desist order."

B. As to the Failure to State a Claim Upon Which Relief Can Be Granted.

6. The Complaint fails to state a claim upon which relief can be granted in that Title USCA, Section 1341, forbids the District Court to "enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." The license fee or tax required by the challenged ordinance was created by the defendant City pursuant to the powers granted to it, as an agent and political subdivision of the State of Illinois, by the Illinois Legislature under the provisions of the Illinois Cities and Villages Act which provides that the City has the power and authority to pass ordinances regulating "the use of the streets" or "to license, tax, and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, and all others pursuing like occupations, and to prescribe their compensation" Ill. Rev. Stats. 1959, Chap. 24, pp. 23-10 and 23-51 (subsequently recodified as Section 11-80-2 and 11-42-6 of Chap. 24 of Ill. Rev. Stat. 1963). Under such statutory grant of authority to the City, the license fees are *taxes* "under State law" within the mean- [fol. 58] ing of said Section 1341 for the purpose of obtaining revenue for the City in connection with the expense of its regulation of public passenger vehicles, including plaintiff's terminal vehicles. In view of the inherent constitutional authority of Illinois state courts to enjoin the collection of illegal taxes which do not comply with the United States Constitution and in view of the remedies available under the Illinois Civil Practice Act providing for declaratory judgments, plaintiff has a plain, speedy and efficient remedy in the state courts of Illinois and this Federal Court should not, therefore, entertain jurisdiction in view of the aforesaid prohibitions of Section 1341. Such

disqualification of the Complaint in this case by reason of Section 1341, as aforesaid, is not negated by the Federal Declaratory Judgment Act (28 USCA, Sections 2201, 2202). Declaratory relief must be refused where said Section 1341 prohibits the Federal Court from enjoining a tax under the State law.

7. Insofar as the present action challenges the constitutionality of the ordinance in question on the ground that the City lacks the power to regulate and to impose a license fee upon plaintiff's terminal vehicles engaged in interstate commerce, this issue has been determined in favor of the defendant City in prior litigation between the parties in the *Atchison* case *(Topeka & Santa Fe et al.* v. *City of Chicago,* 357 US 77, L. Ed. 2d, 1174). This Court has judicial notice of the holding of the Supreme Court of the United States in *Atchison* (357 U. S. 77 at 88 and 89; 2 L. Ed. 1174 at 1182 and 1183):

> "Of course the City retains considerable authority to regulate how transfer vehicles shall be operated. It could hardly be denied, for example, that such vehicles must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require registration of these vehicles and exact reasonable fees for their use as local streets. Cf. *Fry Roofing Co.* v. [fol. 59] *Wood,* 334 U. S. 157, *Capital Greyhound Lines* v. *Brice,* 339 U. S. 542. All we hold here, and all we construe the Court of Appeals as holding, is that the City has no power to decide whether Transfer can operate a motor vehicle service between terminals for the railroad because this service is an integral part of interstate railroad transportation authorized and subject to regulation under the Interstate Commerce Act. Cf. *Castle* v. *Hayes Freight Lines,* 348 U. S. 61."

And further at pages 90-91:

> "In determining whether Chicago's ordinance should now be annulled it must be borne in mind that local

authorities are not foreclosed from regulating matters of local concern merely because there may be some incidental, but not burdensome, effect on interstate commerce. At least since *Cooley* v. *Board of Wardens*, 12 How. 299, it has been recognized that because regulation of local incidents of interstate transportation is, as a practical matter, beyond the effective reach of Congress, there would frequently be an undesirable absence of needed regulation unless states and municipalities were free to act. See *California* v. *Thompson*, 313 U. S. 109, see also *H. P. Welch Co.* v. *New Hampshire*, 306 U. S. 79; *Eicholz* v. *Public Service Comm's of Missouri*, 306 U. S. 268. So much indeed is recognized by the Court today when it says that Chicago, as part of its 'considerable authority' to regulate the operation of transfer vehicles, may exact fees for their use of the city streets and may require them to meet with safety regulations and to be registered with the City. And, of course, the Court's examples do not exhaust the scope of local regulatory power to insure safe transportation. Nor can I perceive why the City should not be permitted to exercise such power before permitting unlicensed vehicles to travel on its streets."

Thus, the City has the constitutional power of regulation by ordinance over the operation of plaintiff's terminal vehicles.

[fol. 60] The sections of the ordinance referred to, and the allegations contained in paragraphs 7, 8, 9, 16, 17 and 18 of the Second Amended Complaint are appropriate and reasonable regulatory measures within the proper scope of the City's aforesaid power of regulation.

8. Next, the plaintiff, however, alleges the ordinance to be void as an unconditional exercise of such power because it provides a wrongful classification. The classification of public passenger vehicles in issue embraces the categories of "terminal vehicles", "taxicabs", "livery vehicles" and "sightseeing vehicles" while exempting from this

classification those public passenger vehicles which are public utilities, as is set forth in Chapter 28 of the Municipal Code of Chicago. (Vehicles operated by a metropolitan transit authority are also exempted, but are not in issue.)

Public utilities in the State of Illinois are regulated by the Illinois Commerce Commission, not by municipalities. The ordinance thus properly provides for license and regulation over only those public passenger vehicles which are not public utilities. The plaintiff's lack of status as a public utility has heretofore been specifically ruled on by this Court in litigation between the parties. In the *Atchison* case this Court expressly held: (136 F. Supp. at 485.)

> " . . . The service of Transfer does not constitute an operation as a public utility and its motor vehicles are not, therefore, concluded from the operation of the ordinance."

It is within the lawful power of the City to regulate the instant classification of public passenger vehicles and exempt from such regulation public utility operated passenger vehicles.

That interstate and intrastate public mass transportation buses may operate on the streets of the City of Chicago without paying the license fee imposed by said or- [fol. 61] dinance in question does not in any way disturb the propriety of the ordinance classification. The ordinance has no purpose or direction to regulate public mass transportation by motor bus, as for fixed fares over fixed routes on fixed schedules. Such buses for public mass transportation are public utilities under the Illinois law. The ordinance is directed and purposed to the regulation of these forms of transportation of passengers that are non-public mass, non-public utility in character. If any bus may be specially chartered for the transportation of passengers, it then qualifies under the definition of a livery under the ordinance which specifies livery vehicles in capac-

cities of over seven passengers, the license fees for which are the same as for terminal vehicles.

On the face of the instant ordinance, therefore, the City has provided a reasonable classification for the licensing and regulation of all public passenger vehicles over which it should exercise its police power and jurisdiction. It is clear from the face of the ordinance that the allegations in paragraphs 14, 15, 21 and 22 of the Second Amended Complaint have no merit.

The ordinance, therefore, as a matter of classification, is reasonable, proper and valid. It does not deprive the plaintiff of any of its constitutional rights in an arbitrary manner without due process of law.

9. All of the allegations of the Second Amended Complaint respecting the City's purported failure to completely enforce the ordinance in question are irrelevant to and have no bearing upon the validity and constitutionality of the said ordinance; nor do such allegations form a basis for the declaratory judgment and injunctive relief prayed for in said Complaint.

10. The plaintiff is barred from raising any issues of wrongful classification by *estoppel* and *re judicata*. This trial Court in the earlier *Atchison* case (136 F. [fol. 62] Supp. 476), held the entire public passenger vehicle ordinance of the City of Chicago in effect in 1955 (herein referred to as "1955 ordinance" and attached hereto and made part hereof as Exhibit B) to be valid. The categories of the classification of public passenger vehicles of the 1955 ordinance have remained unchanged to date, to-wit: "sightseeing vehicle", "taxicab vehicle", "livery vehicle" and "terminal vehicle". The ordinances excluded public ultilities from the definition of public passenger vehicles. (Compare Section 28-1 of Exhibit B, the 1955 Ordinance, with Section 28-1 of Exhibit C, hereof, the 1959 Amendments, and with Exhibit A and B of Defendant's Brief on Remandment. The latter two exhibits consist of the 1963 and 1964 Amendments to the Ordinance. All of said ordinances are

incorporated herein by reference and made a part hereof.) In subsequent appellate proceedings the said ruling of this Court in *Atchison* was modified only in that Section 28-31.1 of the 1958 ordinance was declared void. However, these appellate decisions did not otherwise disturb the ruling of this Trial Court respecting the validity of the other provisions of the 1955 ordinance.

In the earlier *Atchison* case the plaintiff may have with propriety raised the issue concerning a wrongful classification under the 1955 ordinance respecting public passenger vehicles in an effort to defeat said ordinance. The plaintiff failed to present this issue as it might have. Accordingly, the plaintiff's present challenge of wrongful classification to the instant ordinance is barred by the doctrine of *estoppel* and *res judicata*.

11. It appears from the face of the ordinance in question that said ordinance does not violate Article 1. Section 8 of, or the 14th Amendment to the Constitution of the United States, does not discriminate against interstate commerce, does not provide for unfair or reasonable license fees, or for unfair or unreasonable regulation of plaintiff's [fol. 63] terminal vehicles, does not unreasonably burden or impede the free flow of interstate commerce, and does not permit plaintiff from providing service in interstate commerce in accordance with the rules and regulations of the Interstate Commerce Commission. The Complaint fails to allege any factual basis for its charge that the license fees for terminal vehicles under the ordinance or any regulatory provision of the ordinance constitutes an unreasonable burden upon the interstate commerce operations of plaintiff. To sustain a charge of unreasonable burden upon interstate commerce, a plaintiff has the burden of alleging the factual basis therefor and conversely the City does not have the burden of showing the reasonableness of its legislation. For this additional reason the Complaint fails to state a claim upon which relief can be granted.

12. The sections of the Interstate Commerce Act and the rules and regulations of the Interstate Commerce Commission referred to in paragraph 5 of the Second Amended Complaint do not preclude the regulation of plaintiff's terminal vehicles by the City of Chicago in the manner prescribed by the ordinance being challenged. There is no conflict between such regulation by the City and said federal statutes and regulations. The plaintiff's full compliance with said ordinance would not prevent plaintiff from fully complying with said federal statute and regulation of the Interstate Commerce Commission.

Exhibit A attached to both the First and Second Amended Complaint and referred to in paragraph 5 of each pleading thereof on its face discloses that the order of the Interstate Commerce Commission dated February 17, 1961 did not vest any rights whatever in the plaintiff until certain acts by the plaintiff and others were accomplished so as to consummate the transaction referred to in said order.

[fol. 64] The Second Amended Complaint completely fails to allege that such acts were accomplished subsequent to the entry of said order of February 17, 1961. Accordingly, insofar as the record before this court is concerned, said order is of no force and effect under the provision of said order, stating that "unless the authority herein granted is exercised within 180 days of the date hereof, this order shall be of no further force and effect. Moreover, even if the transaction referred to in said order had been accomplished within said 180 days so as to make said order effective, nothing contained in said order, nor the legal consequences flowing therefrom, could preclude the City of Chicago from regulating the plaintiff's terminal vehicles in accordance with and in the manner prescribed by the ordinance being challenged.

13. The following facts appear from the affidavit of the Public Vehicle License Commissioner of the City of Chicago attached hereto and made a part hereof as Exhibit A:

The license fees received by the City from all public passenger vehicles under the ordinance in question for the year 1960 totaled $374,567.00, for the year 1961 totaled $368,432.00, for the year 1962 totaled $368,879.00 and for the year 1963 totaled $385,639.00. For the year 1960 the total appropriation of the City for the Public Vehicle License Commission for the administration, supervision and regulation of public passenger vehicles encompassed by said ordinance was $128,283.00; for 1961 such total appropriation was $105,169.00, for 1962 such total appropriation was $168,394.00, and for the year 1963 such total appropriation was $163,119.00. For the year 1960 the total appropriation of the City to the Department of Police for the sole and specific purpose of enforcing the ordinance in question was $186,050.00, for the year 1961 such appropriation was $213,448.00, for the year 1962 such appropriation was $324,480.00, and for the year 1963 such appro-
[fol. 65] priation was $199,522.00. These figures do not include expenses incurred by the City in maintaining and repairing the streets of the City used by the public passenger vehicles or the salaries of police and other employees of the City engaged in general traffic control and such other general overhead expenses as legal fees incurred in ordinance enforcement, etc.

Moreover, while the license fees received from public passenger vehicles under the ordinance in question have not as yet been determined for 1964, the total amount thereof is relatively constant.

Thus, the license fees received under the ordinance in question are commensurate with the expenses incurred by the City in the exercise of its constitutional power and authority to regulate and license public passenger vehicles.

The plaintiff paid in 1960 only $1,630 of the $374,567 received by the City under the ordinance for the year 1960. The licenses received by plaintiff for this $1,630 covered twenty terminal vehicles which transported 3,900 railroad passengers daily in interstate commerce within the City

limits. (This amount of passengers was reported in the *Atchison* case [240 F. 2d 930, 933] as an undisputed fact. While that case related to the year 1955, the railroad passengers being transported by plaintiff remains relatively constant.)

Just prior to the enactment of the ordinance in question the plaintiff in its letter of August 12, 1959 to the Public Vehicle License Commissioner stated as follows:

> "It is therefore my suggestion that you amend the proposed license fee to provide for a $40 license fee for a vehicle with a 12-passenger capacity, and $5 additional for each passenger capacity over twelve. This would be acceptable to my client."

[fol. 66] The breakdown of the $1,630 fees paid by plaintiff upon demand and without protest for the year 1960 in complete compliance with the license requirements for its terminal vehicles is as follows:

Number of Vehicles	Capacity				
4	10	persons at	$ 55.00	per vehicle	$ 220.00
9	18	persons at	70.00	per vehicle	630.00
1	19	persons at	100.00	per vehicle	100.00
5	21	persons at	110.00	per vehicle	550.00
1	25	persons at	130.00	per vehicle	130.00
					$1,630.00

Thus, the discrepancy between what the plaintiff conceded in 1960 to be reasonable and the license fee requirements of the ordinance in question amounted to only $460 per year for the annual transportation of about 1,423,500 passengers on the streets of Chicago. This inconsequential discrepancy has continued to date. Pursuant to order of this Court plaintiff has deposited with the Clerk of this Court, pending the outcome of this litigation, $4,890 representing the total license fees required of plain-

tiff under the ordinance in question for the years 1961, 1962 and 1963, based upon license fees of $1,630 for each of these years.

On the face of the ordinance being challenged, and by reason of the foregoing facts appearing in Exhibit A, the license fee required of terminal vehicles is reasonable and in no way constitutes a forbidden or unconstitutional burden on interstate commerce.

The City properly followed the customary legislative standard in Illinois of distinguishing between motor carriers having a capacity of 7 persons (see Ill. Rev. Stats. Chap. 95½, Section 3-801 (c) and Chap. 111⅔, Section 29 (a)) instead of following the suggestion of plaintiff.

The inconsequential amount of the discrepancy between [fol. 67] the legislative judgment of the City Council and the opinion of the plaintiff respecting the reasonability ($460) reflects further upon the lack of the jurisdictional amount in controversy first mentioned above herein.

14. The allegations in paragraph 22 of the Second Amended Complaint are without merit and constitute erroneous legal conclusions. Said ordinance on its face purports to regulate all terminal vehicles, and not merely plaintiff's terminal vehicles. As it appears from Exhibit A hereto, plaintiff happens to be the only one operating terminal vehicles in the City of Chicago, but this fact does not render the classification of the ordinance invalid and does not cause the ordinance, as applied to the plaintiff, to violate the 14th Amendment of the Constitution of the United States. Nor can the provisions of the ordinance authorizing the Mayor to revoke licenses upon the recommendation of the Public Vehicle License Commissioner for violations of the ordinance, or the rules of the Commissioner be construed with such distortion as to cause such provisions to violate the 14th Amendment. The Complaint completely fails to allege any action by the Mayor, the Commissioner, or any other defendant, to deny plaintiff the right to operate the termi-

nal vehicles upon the streets of Chicago. In the absence of such allegations, it must be conclusively presumed that the defendants will take no action under said ordinance which would violate any of the rights of the plaintiff guaranteed by the Fourteenth Amendment or the mandate of the Supreme Court of the United States as expressed in *Castle* v. *Hayes Freight*, 348 U. S. 61 (1954); *Chicago* v. *Atchison T. & S. F. R. Co.*, 357 U. S. 77, prohibiting state or municipal administrative officers from stopping interstate operations.

As it appears from Exhibit A hereto, the defendants have not harassed the plaintiff in the conduct of its business by stopping any of its vehicles or by seeking the assess-
[fol. 68] ment of fines or penalties. Plaintiff has no right to resort to equity or seek a declaratory judgment merely because of an anticipation of improper or invalid action in administering said ordinance. One cannot invoke to defeat an ordinance a speculation of what might be done under it, and, when if done, might not receive judicial approval.

15. The Second Amended Complaint does not allege that two ordinances enacted by the City Council on July 1, 1963 and June 10, 1964, which was subsequent to the argument of the above entitled cause before this Court, has created any new burden upon them, nor do they in any way specifically allege the invalidity of any of the sections of said 1963 or 1964 ordinances or allege that any new burdens are created thereby. Thus the Second Amended Complaint has presented no allegation which demonstrates to this court that the effect of the enactment or the present enforcement of said ordinances should cause this Court to alter the Court's opinion of September 9, 1963.

Wherefore, defendants pray that the Complaint be dismissed for lack of jurisdiction, or. in the alternative, that the Complaint be dismissed for failure to state a claim

upon which relief can be granted, and that judgment be entered in favor of the defendants.

City of Chicago, a Municipal Corporation, and its Mayor, Superintendent of Police and Public Vehicle License Commissioner, Defendants, By James G. O'Donohue, Acting Corporation Counsel. John O. Tuohy, Assistant Corporation Counsel.

[fol. 69] Proof of Service (omitted in printing).

[fol. 70]

EXHIBIT A TO MOTION TO STRIKE THE SECOND AMENDED COMPLAINT, ETC.

IN THE UNITED STATES DISTRICT COURT

60-C-1509

Affidavit of James Y. Carter, Public Vehicle License Commissioner.

James Y. Carter, being first duly sworn, on oath deposes and states that:

1. He is the Public Vehicle License Commissioner of the City of Chicago, a Municipal Corporation, and is the successor in office to William P. Flynn, who as Commissioner was named as one of the defendants in the above entitled cause.

2. On August 19, 1960 the Public Vehicle License Commissioner of Chicago demanded that plaintiff immediately make application for licenses for its terminal vehicles and comply with the provisions of the ordinances challenged in the above entitled cause.

3. Pursuant to such demand a letter dated August 26, 1960 addressed to the Honorable William P. Flynn, Public Vehicle License Commissioner of the City of Chicago and signed by Alex Baxter, Vice President of Railroad Trans-

fer Service, Inc., a corporation, the plaintiff in the above entitled cause, a true and correct photostatic reproduction of which is attached to and made a part of this Affidavit as Exhibit I, was received by the City of Chicago on August 29, 1960 and is a part of the retained official records kept in the regular course of business of the office of the Public Vehicle License Commissioner of the City of Chicago. The enclosures referred to in said letter were received by the City at the same time as was the letter.

4. The 1960, 1961, 1962 and 1963 Annual Report of the Public Vehicle License Commission of the City of Chicago, attached hereto and made a part hereof as Exhibits II, III, [fol. 71] IV and V are the official annual reports of the Public Vehicle License Commission for the years ending December 31, 1960, December 31, 1961, December 31, 1962 and December 31, 1963 to the Mayor and City Council of the City of Chicago.

(The total revenues received by the Public Vehicle License Commission for the year 1960 is shown on page 2 of Exhibit II. From the total of $401,167.00 must be subtracted the amount of $80.00, received on account of the item of taxicab operating fees in 1958 and the further amount of $26,520.00 received on account of the item of taxicab operating fees in 1959, leaving a net figure of $374,567.00 as the revenue for 1960.)

5. Exhibits VI, VII, VIII and IX attached hereto and made a part hereof are true and correct copies of the official Annual Appropriation Ordinances of the City of Chicago for the years 1960, 1961, 1962 and 1963 relating to the breakdown of "Distribution of Appropriations by Organizational Activities" of the office of the Public Vehicle License Commission.

6. Exhibits X, XI, XII and XIII attached hereto are true and photostatic copies of the official Annual Appro-

priation Ordinance of the City of Chicago for the years 1960, 1961, 1962 and 1963 relating to the breakdown of "Distribution of Appropriations by Organizational Activities" of the Department of Police.

7. The letter dated August 12, 1959 addressed to the Honorable William P. Flynn, Commissioner of Public Vehicles, and signed by Albert J. Meserow, a true and correct photostatic reproduction of which is attached to and made a part of this Affidavit as Exhibit XIV, was received by the City of Chicago on August 14, 1959 and is a part of the retained official records kept in the regular course of business of the office of the Public Vehicle License Commissioner of the City of Chicago.

[fol. 72] 8. The license fees paid by Railroad Transfer Service, Inc., the plaintiff in the above entitled cause, for the year 1960 totaled the sum of $1,630.00 and the licenses issued by the City therefor covered twenty (20) terminal vehicles, as follows:

4-10 persons at	$ 55.00	$ 220.00
9-13 persons at	70.00	630.00
1-19 persons at	100.00	100.00
5-21 persons at	110.00	550.00
1-25 persons at	130.00	130.00
		$1,630.00

9. The total amount of the annual license fees or taxes required to be paid by the plaintiff in the above entitled cause for the year 1960 under the ordinance being challenged in said cause for the number and kind of terminal vehicles then operated by the plaintiff was $1,630, which amount was paid by the plaintiff to the defendant City of Chicago prior to the institution of the instant litigation. Said plaintiff pursuant to orders of the court in the above entitled cause deposited with the Clerk of the Court a total of $4,890, representing the total amount of the license fees

or taxes due under said ordinance for the years 1961, 1962 and 1963.

10. The appropriations by the City Council of the City of Chicago referred to in this Affidavit do not include expenses incurred by the City in maintaining and repairing the streets of the City used by public passenger vehicles nor the salaries of police or other employees of the City engaged in general traffic control and such other general overhead expenses as legal fees incurred in ordinance enforcement.

11. During the year 1960 said plaintiff fully complied with all of the requirements of the ordinance and regulations of the Public Vehicle License Commissioner of the [fol. 73] City of Chicago referred to in paragraphs 8, 16 and 17 of the Second Amended Complaint filed in the above entitled cause, by filing a list of equipment, a financial statement, a corporate certificate of authorization, a certificate of insurance, its corporate charter, and by performing all other acts necessary to satisfy such requirements. Since the filing of the original Complaint in the above entitled cause to date, the plaintiff likewise has substantially complied with all of the requirements of said ordinance and said regulations of the Public Vehicle License Commissioner. (The license fees or taxes for the years 1961, 1962 and 1963, however, were deposited with the Clerk of the Court pending the outcome of said litigation instead of being paid directly to the City of Chicago.)

12. Since the year 1955 plaintiff has been, and still is, the only operator of terminal vehicles in the City of Chicago.

13. Neither affiant nor any of the other defendants in the above entitled cause has harassed the plaintiff in the conduct of its said business or by preventing it from operating any of its terminal vehicles or by seeking the assessment of fines or penalties against the plaintiff or in any other manner.

In Witness Whereof I have hereunto set my hand and seal this 4th day of January, 1965.

James Y. Carter, Public Vehicle License Commissioner of the City of Chicago.

Subscribed and sworn to before me this 4th day of January, 1965.

Joseph E. Carmody, Notary Public.

(Seal)

[fol. 75]

EXHIBIT I

Railroad Transfer Service, Inc.
420 West Kinzie Street
CHICAGO 10, ILLINOIS

August 26, 1960

Hon. Wm. P. Flynn
Public Vehicle License Commissioner
City of Chicago
1104 South Wabash Avenue
Chicago, Illinois

Dear Commissioner Flynn:

We hand you herewith the application of Railroad Transfer Service, Inc., for 20 City of Chicago Terminal Vehicle Licenses for the year 1960; our check payable to you in the amount of $1630.00, representing the license fee required under Chapter 28 of the City of Chicago Municipal Code as amended; an attached list of equipment with details of said equipment; a financial statement of the undersigned; a corporate certificate of authorization; a certificate of insurance; and the corporation charter.

Very truly yours,

RAILROAD TRANSFER SERVICE, INC., A CORP.

Alex Barber
Vice President

AB/lr

PUBLIC VEHICLE LICENSE COMMISSION
RECEIVED
AUG 29 1960
By .....

Exhibit II

REVENUE

TYPE	NUMBER	FEE	TOTAL
Livery Licenses	353	$ 40.00	$ 14,120.00
Taxicab Operating Fee in 1958	2	40.00	80.00
Taxicab Operating Fee in 1959	663	40.00	26,520.00
Taxicab Licenses	4608*	60.00	276,480.00
Transfer Fee	1	50.00	50.00
Sightseeing Buses	15	150.00	2,250.00
Terminal Vehicles	20	Various	1,630.00
School Vehicles (Class No. 1)	7	5.00	35.00
School Vehicles (Class No. 2)	132	10.00	1,320.00
Duplicate Decals	1511	1.00	1,511.00
Chauffeur Licenses (Original)	4792	5.00	23,960.00
Chauffeur Licenses (Renewal)	8418	3.00	25,254.00
Taximeter Inspections	9319	3.00	27,957.00
		TOTAL	$401,167.00

LICENSES ISSUED

PUBLIC PASSENGER VEHICLE LICENSES		PUBLIC CHAUFFEUR LICENSES	
Taxicab	4,608		
Livery	353	Original	4,792 **
Terminal	20	Renewal	8,418
Sightseeing Bus	15		
School Vehicle	139		
TOTAL	5,135	TOTAL	13,210

* During the year, investigations disclosed that 8 licensees had falsified their applications for their 1960 taxicab licenses and were actually residing out of the city. These 8 licenses were surrendered and reissued to qualified licensees, thus accounting for the extra 8.

** Out of a total of 4,792 original applications 339 were denied.

PVLC (60)

[fol. 77]

EXHIBIT III

REVENUE

TYPE	NUMBER	FEE	TOTAL
Livery Licenses	349	$ 40.00	$ 13,960.00
Taxicab Licenses *	4612	60.00	276,720.00
Transfer Fee	5	50.00	250.00
Replacement Metal Plate	266	1.00	266.00
Duplicate Metal Plate	5	2.00	10.00
Suspended Metal Plate	45	5.00	225.00
Sightseeing Buses	20	150.00	3,000.00
Terminal Vehicles **	20	Various	
School Vehicles (Class No. 1)	24	5.00	120.00
School Vehicles (Class No. 2)	196	10.00	1,960.00
Duplicate Decals	4	1.00	4.00
Chauffeur Licenses (Original)	3320	5.00	16,600.00
Chauffeur Licenses (Renewal)	9095	3.00	27,285.00
Taximeter Inspections	9344	3.00	28,032.00
		TOTAL	$368,432.00

* Twelve (12) licenses were surrendered due to residence out of the City of Chicago and reissued to qualified licensees.

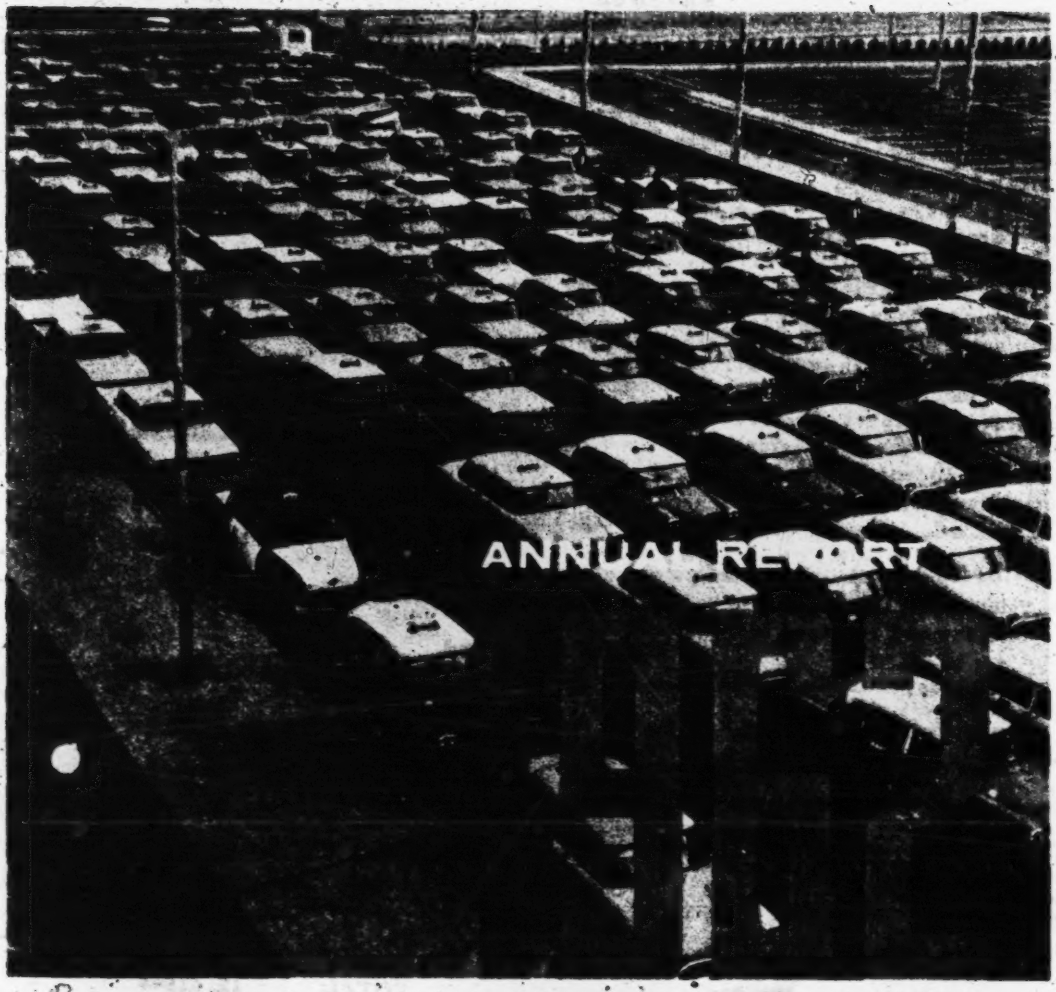
Monies deposited in the United States District Court..... $ 1,630.00

PUBLIC PASSENGER VEHICLE LICENSES		PUBLIC CHAUFFEUR LICENSES	
Taxicab	4,612		
Livery	349	Original	3,320*
School Vehicle	220	Renewal	9,095
Terminal	20		
Sightseeing Bus	20		
TOTAL	5,221	TOTAL	12,415**

* Out of a total of 3,320 original applications 146 were denied..... 146

** Out of a total of 12,415 applications --- an additional 918 had applied and were rejected: 576 on medical and 342 on City information examination..... 918

EXHIBIT IV



CITY OF CHICAGO

PUBLIC VEHICLE LICENSE COMMISSION

THE CHICAGO CITY COUNCIL

RICHARD J. DALEY
Mayor

JOHN C. MARCIN
City Clerk

PAUL T. CORCORAN
*President Pro Tem**

MORTON A. GORDON
Deputy City Clerk

ALDERMAN	WARD
John D'Arco	1
William H. Harvey	2
Ralph H. Metcalfe	3
Claude W. B. Holman	4
Leon M. Despres	5
Robert H. Miller	6
Nicholas J. Bohling	7
James A. Condon	8
Dominic J. Lupo	9
Emil V. Pacini	10
Stanley J. Nowakowski	11
Arthur V. Zelezinski	12
John E. Egan	13
Joseph P. Burke	14
Joseph J. Kruka	15
Paul M. Sheridan	16
Arthur A. Slight	17
James C. Murray	18
Thomas F. Fitzpatrick	19
Kenneth E. Campbell	20
Charles S. Bonk**	21
Otto F. Janousek	22
George J. Tourek	23
Benjamin F. Lewis	24
Vito Marzullo	25
Vacancy	26
Harry L. Sain	27
Vacancy	28
Thomas F. Burke	29
Daniel J. Ronan	30
Thomas E. Keane	31
Robert J. Sulski	32
Vacancy	33
Rex Sande	34
Casimir C. Laskowski	35
Robert L. Massey	36
Paul T. Corcoran	37
William J. Cullerton	38
Philip A. Shapiro	39
Vacancy	40
Harry Bell	41
Dorsey R. Crowe***	42
Mathias Bauler	43
Thomas Rosenberg	44
Vacancy	45
James F. Young	46
John J. Hoellen	47
Morris Hirsh	48
Paul T. Wigoda	49
Jack I. Sperling	50

*Appointed August 2, 1962
**Resigned August 14, 1962
***Deceased July 7, 1962

Robert F. Campbell, *Record Clerk*
William F. Harrah, *Sergeant-at-Arms*
Alec Busta, *Assistant Sergeant-at-Arms*
Michael Coletta, *Assistant Sergeant-at-Arms*
Clement J. McDermott, *Assistant Sergeant-at-Arms*

RICHARD J. DALEY
MAYOR

CITY OF CHICAGO
PUBLIC VEHICLE LICENSE COMMISSION
ROOM 100—1111 S. STATE ST.

JAMES Y. CARTER

April 22, 1963

The Honorable Richard J. Daley
The Honorable Members of the City Council

Gentlemen:

The Public Vehicle License Commission submits herewith its Annual Report for the year ended December 31, 1962.

Summarized in this Annual Report are the activities, accomplishments and sources of revenue.

We wish to thank your Honorable Body for your excellent cooperation in all matters pertaining to this Commission. We also wish to thank all the City Departments and particularly the Corporation Counsel, Police Department and Health Department for the helpful assistance given this Commission.

Respectfully submitted,

James Y. Carter
Commissioner

ADMINISTRATION

PUBLIC VEHICLE LICENSE COMMISSION

The culmination of two years planning occurred on November 8, 1962, when the Commission's operation was transferred to its present quarters at Room 105—1111 South State Street. The effect of perfect planning is prevalent in every corner of this ideally situated office on the ground floor of this modern Chicago Police Headquarter Building.

For several years Government Agencies as well as other businesses have been tackling what has been called the "Technical Information Crisis." This crisis was not a lack of information, but on the contrary, there was plenty of information, but to record, store and recall the immediate transmission was an ever increasing problem. In an agency such as ours where there is a constant referral problem not only of current records but records dating back many years by the numerous police agencies, the establishing of a quick, accurate and complete filing system became mandatory. In keeping with Mayor Daley's plan to modernize City Departments on a level with private business, a survey was made to ascertain our needs. As a result we have a modern efficient records room that enables us to provide a fast, accurate recording and transmission service of all vital statistics to the agencies requiring them, with the minimum in cost and maximum in efficiency.

James Y. Carter
Commissioner

Marie Cooney
Secretary to
Commissioner

Card Punch Machine
in the Records Room

Rotary Filing

Rotary File in the Records Room

Microfilm Viewer

Electronic Recorder

ELECTRONIC RECORDING

An electronic magnetic recorder equipped with a tape that can be run continuously for 16 hours, has replaced the need of a stenographer recording and then transcribing the records of hearings conducted by the Commission in chauffeur violations, cases of passenger complaints and matters of regulations and revocations.

New Drivers' Registration

Renewal of Chauffeur's License

EYE TESTING MACHINE.

A new instrument for measuring the visual skills of public chauffeurs. This machine is a forward step in improving traffic safety and driver efficiency. The machine was designed to meet requirements of State Motor Vehicle Bureaus who need more reliable and valid vision tests that can be used with confidence in chauffeur testing programs.

REGISTER-VERIFIER.

Before our modernization program, a total of thirteen employees handled cash received for the various fees collected by this Commission. The addition of this Register-Verifier has enabled one employee to handle all monies, issue receipts and record number and type of transaction.

FINGER PRINTING.

Prospective applicant for public chauffeur license being finger printed prior to check out by the Chicago Police Department Bureau of Identification as well as the Federal Bureau of Investigation.

150

REVENUE

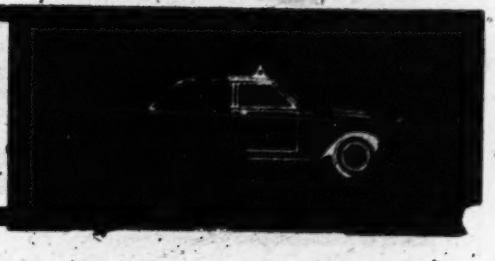
TYPE		NUMBER	TOTAL
PUBLIC PASSENGER VEHICLE LICENSES		5,142	$294,920.00
	(fee)		
Transfer Fee	50 00	5	250.00
Replacement Metal Plate	1.00	1,545	1,545.00
Duplicate Metal Plate	2.00	150	300.00
Suspended Metal Plate	5.00	54	270.00
Duplicate Decals	1.00	33	33.00
Chauffeur Licenses (Original)	5.00	3,403*	17,015.00
Chauffeur Licenses (Renewal)	3.00	8,888*	26,664.00
Taximeter Inspections	3.00	9,294	27,882.00
Terminal Vehicles**		20	

TOTAL REVENUE $368,879.00

*Out of a total of 3,403 original applications 121 were denied. Out of the total 12,291 applications (Original and Renewal), an additional 213 had applied and were rejected: 138 on medical and 75 on City information examination.

**Monies deposited in the United States District Court.....$1,630.00

ACTION TAKEN AGAINST LICENSEES ON ARRESTS COMPLAINTS VIOLATIONS



LICENSES DENIED

Livery Licenses	5
Total Denied	5

LICENSES REVOKED

Chauffeur Licenses	18
Taxicab Licenses	1
Livery Licenses	1
Total Revoked	20

LICENSES SUSPENDED

(For Ordinance Violations, Lack of Required Insurance, etc.)

School Vehicles	28
Livery Licenses	29
Taxicab Licenses	81
Chauffeur Licenses	3154
Total Suspended	3292

(The following persons were arrested and warned against further violation of the Taxicab Ordinance.)

Public Chauffeurs	2899
Unlicensed individuals operating private cars as liveries	116*
Operators of suburban taxicabs	246*
Total	3261

*No further action could be taken against these individuals since they were not licensed by this Commission.

TOTAL LICENSES DENIED, REVOKED AND SUSPENDED 3317

TAXICAB INSPECTIONS

Taxicab Inspections	6113
Taxicab Replacements	1403
Taxicab Rejections	461
Taxicab Reinspections and Approved	461
Total Taxicab Inspections	7977

LIVERY INSPECTIONS

Livery Inspections	491
Livery Replacements	13
Livery Rejections	56
Livery Reinspections and Approved	56
Total Livery Inspections	560

SCHOOL VEHICLE INSPECTIONS

School Vehicle Inspections	154
School Vehicle Rejections	35
School Vehicle Reinspections and Approved	35
Total School Vehicle Inspections	189

SIGHTSEEING VEHICLE INSPECTIONS

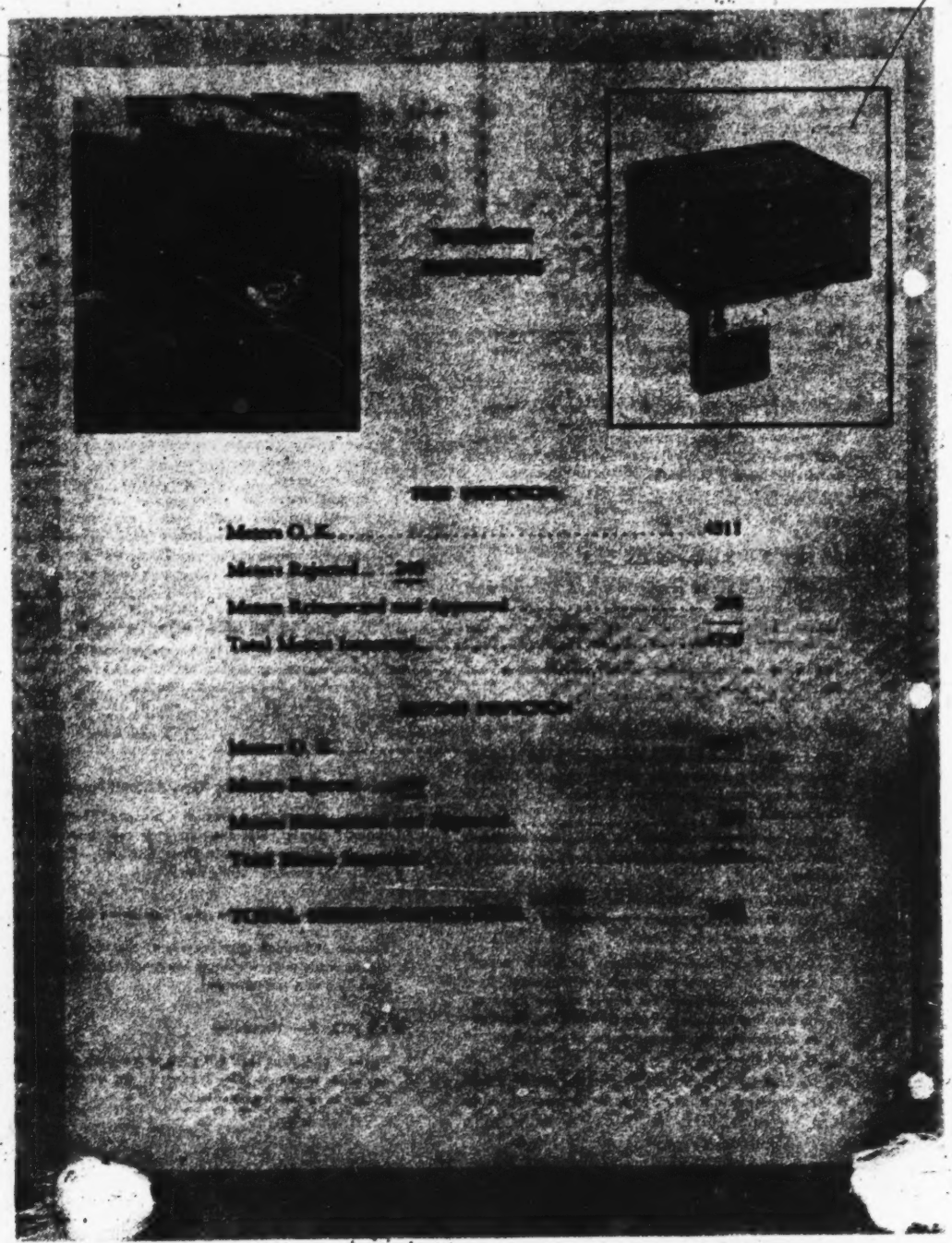
Sightseeing Vehicle Inspections	20
Total Sightseeing Vehicle Inspections	20

TERMINAL VEHICLE INSPECTIONS

Terminal Vehicle Inspections	20
Total Terminal Vehicle Inspections	20

TOTAL PUBLIC PASSENGER VEHICLE INSPECTIONS	8766

[fol. 87]



Rules of the
PUBLIC VEHICLE
LICENSE COMMISSION
CITY OF CHICAGO

RULE NO. 1 — *Soliciting of Passengers*

Passengers may only be solicited by a chauffeur while he is behind the wheel of his vehicle, and only the words — "taxicab," "taxi" or "cab" may be used.

RULE NO. 2 — *Failure to Use "Not For Hire" Sign*

All taxicabs entering the airports with or without passengers, shall display "Not For Hire" signs until arriving at loading terminals.

Taxicabs on radio calls or otherwise out of service must display "Not For Hire" signs.

RULE NO. 3 — *Illegal Pick Up*

Chauffeurs will not be permitted to pick up passengers on the upper deck at Chicago-O'Hare International Airport. Taxicabs discharging passengers at unloading points on the upper deck will leave immediately.

Trip sheet entries or other details will be made on arrival at the staging area.

RULE NO. 4 — *By-Passing Cab Line*

Cab Stand or (Cab Line) A fixed area in the roadway alongside and parallel to the curb set aside for taxicabs to stand or wait for passengers, as established by City Ordinance.

Taxicab stands are designated by metal sign standards indicating stand capacity and bearing stand identification number.

a. Taxicabs entering cab stand or authorized feed line shall take the rear position. Overcrowding or backing into cab stand is prohibited.

b. Taxicabs discharging passengers at hotels, depots, airports or wherever cab stands are designated, must not accept passengers for service unless there are no standing taxicabs in the established cab stand and in accordance with the provisions of sub-section "c" of Rule No. 4.

c. No cruising taxicab shall pick up or accept a load alongside of, in front of, adjacent to, or on the same side of the street in the same side of a city block where there is an established cab stand and said cab stand is occupied by standing cabs.

d. Nothing in these rules shall be construed to prohibit a passenger from indicating his or her preference for a particular taxicab standing or waiting in an established taxicab stand provided that the chauffeur of said vehicle exercises extreme caution in entering traffic lanes from any position but the head of said cab stand; except at Chicago-O'Hare International Airport where for safety reasons and/or taxicab control purposes traffic pylons are erected that forbid such movements. In such instance the passenger may designate or take the taxicab of his or her choice but said taxicab so designated or taken by the passenger shall not leave or depart said cab line until it has reached the head of said cab line. Where said cab line is not moving due to low incidence or no passenger movement then an authorized person or persons in charge of said cab line may, in his or their discretion, allow said taxicab so specifically engaged by the passenger to depart from its standing position in the cab line without waiting to reach the head of the cab line.

RULE NO. 5 — *Failure to Record Stand Number*

Drivers using staging area at Chicago-O'Hare International Airport, will enter in their own handwriting taxicab number on sign-in sheet provided, after their vehicle has reached "ready line."

RULE NO. 6 — *Cab Parked in Cab Stand Unattended*

Taxicab chauffeurs must remain at the wheel of their vehicle ready to be employed when said vehicle occupies a position in a taxicab stand.

RULE NO. 7 — *Gambling*

Taxicab chauffeur shall not park or leave his vehicle in any place to engage in dice, cards or any other game of chance in or about said vehicle.

[fol. 89]

Rules — Continued

RULE NO. 8 — Courtesy

Taxicab chauffeurs shall be courteous to passengers, prospective passengers and other drivers at all times. He shall not threaten, abuse, insult, provoke, interfere with, impede or obstruct any other person, any passenger or other drivers, in connection with the operation of his vehicle.

RULE NO. 9 — *Failure to report recovered articles*

a. The chauffeur of a taxicab shall thoroughly search the interior of the vehicle immediately at the termination of each trip.

b. All taxicab chauffeurs shall be required to report to the public vehicle license commission, telephone WAbash 2-4747, Ext. 317 or 318, immediately on the finding of any package, article, baggage or goods of any kind left in the vehicle of which he is in charge; except that chauffeurs of firms or associations may report recovery to firms or associations lost and found departments as an alternative.

RULE NO. 10 — *Short Trips — Chicago-O'Hare International Airport*

a. On being informed that a passenger's destination will fall within a short trip area ($2.05 or less) chauffeur will request a short trip ticket from the starter.

b. Starter issuing ticket will then stamp ticket in space provided and countersign with his personal punch.

c. On chauffeur's return to staging area, he will enter address of passenger's destination and fare collected on reverse side of ticket. In entering staging area he will enter short trip line and present ticket to starter. If approved, starter will stamp and punch with personal stamp. Short trip taxicabs in this line will be dispatched first.

d. Thirty-five (35) minutes will be allowed for traveling time. Chauffeurs to be eligible for this service must return immediately to staging area after discharging their passengers and not to loading terminals. This includes all trips within the air field, cargo area, parking lot, over-seas docks and Chicago, zone No. 1.

e. Only two short trips in succession will be allowed.

f. It is expected that chauffeurs will extend the maximum in courtesy to passengers who request short trip service.

RULE NO. 11 — *Failure to Surrender License to Vehicle Officer*

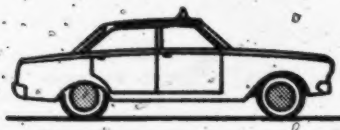
A taxicab chauffeur shall upon request of a police officer surrender his public chauffeur license and supply any additional information requested by a police officer concerning the operation of his taxicab.

RULE NO. 12 — *Driving Under Suspension*

No public vehicle license chauffeur shall operate a taxicab or livery vehicle while his chauffeur license is under suspension or revocation.

James G. Carter

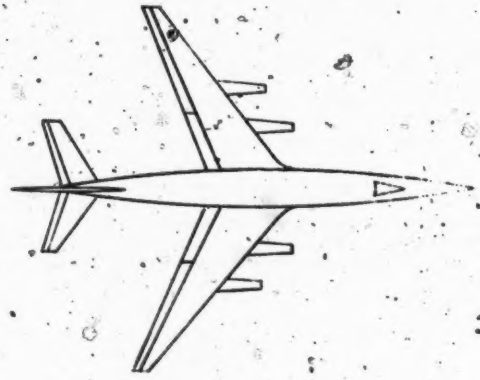
Commissioner of Public Vehicle Licenses



O'HARE INTERNATIONAL AIRPORT

On June 10, 1962, this Commission's greatest challenge was culminated when the City of Chicago received permission from the Illinois Supreme Court to bar the unlicensed suburban taxicabs from Chicago-O'Hare International Airport. On this date, months of planning on rates, routes, instructions, publication of rules, regulations and information plus the installation of emergency communication systems were brought to a successful climax at 12:01 A. M.

To the lasting credit of the chauffeurs, taxicab companies and associations, who cooperated with this Commission, the transition was hardly perceptible to the traveling public. Presently we are loading 1800 taxicab loads per day compared to 925 in June of 1962, and most important of all, passenger service complaints are decreasing as taxicab loadings increase.



Driver Control

Under Section 28-1.3, it is mandatory that all public chauffeur licensees have valid Illinois State chauffeur licenses. Heretofore it was possible for public chauffeur licensees to retain their licenses after their State chauffeur license was suspended or revoked as it was only required to produce it at the time of original application or at renewal periods.

In a cooperative plan in conjunction with the Secretary of State's Office, we are now notified immediately when a chauffeurs license is suspended or revoked, at which time we suspend the public chauffeur license pending the restoration of the State license by the State of Illinois.

School Buses

Pupil transportation is one of the recent services schools have undertaken. Rural schools depend almost entirely on school buses while for the most part city schools are within walking distance. The problem of the working mother has necessitated the establishing of many day nurseries, day care centers, day camps and play group schools. Necessarily these pupils must be picked up and delivered to these schools by school buses. In the administration of such a transportation program we have been confronted with the problem of establishing standards for bus bodies, bus chassis and seating arrangements, requirements and qualifications for school bus chauffeurs, inspection of equipment, color schemes, signal lights, safety equipment etc.

If these and similar questions are not properly answered the pupils will not be transported safely, efficiently or comfortably. Since the adoption of this ordinance in 1957 we have made great strides in the answer to most of these problems and the goal of this commission in 1963 is to complete its program of standardizing its specifications for these vehicles.

Lost and Found Section

This section was organized during 1961 with satisfactory results. It has always been a problem because of the many elements involved in handling recovered articles where the loser is generally a visitor to Chicago. Formerly chauffeurs were required to bring recovered articles to this office, entailing loss of time to them, which was a deterrent to reporting articles, the maintaining of inventories, storage and the disposal of uncalled for articles, were some of the fallacies of the old system.

On receiving the report of a loss the chauffeur is contacted and advised as to where the article may be returned. This arrangement has increased recovery percentage to about 85% of reported losses.

Such items as fur pieces, tape recorders, cameras, brief cases, important business papers, stocks, wearing apparel, purses and umbrellas have been returned during this year.

RICHARD J. DALEY
Mayor

JAMES V. CARTER
Commissioner

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EXHIBIT V

CITY OF CHICAGO

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ANNUAL REPORT:

PUBLIC VEHICLE LICENSE COMMISSION

RICHARD J. DALEY
MAYOR

JOHN C. MARCIN
City Clerk

JAMES C. MURRAY
President Pro Tem

MORTON A. GORDON
Deputy City Clerk

Ward	ALDERMAN	Ward	ALDERMAN
1	Donald W. Parrillo	26	Stanley M. Zydlo
2	William H. Harvey	27	Harry L. Sain
3	Ralph H. Metcalfe	28	Alphonse R. Tomaso
4	Claude W. B. Holman	29	Thomas F. Burke
5	Leon M. Despres	30	Daniel J. Ronan
6	Robert H. Miller	31	Thomas E. Keane
7	Nicholas J. Bohling	32	Robert J. Sulski
8	James A. Condon	33	Robert Brandt
9	Dominic J. Lupo	34	Rex Sande
10	John J. Buchanan	35	Casimir C. Laskowski
11	Matthew Danaher*	36	Robert L. Massey
12	Arthur V. Zelezinski	37	Paul T. Corcoran***
13	David W. Healy	38	William J. Cullerton
14	Joseph P. Burke	39	Philip A. Shapiro
15	Joseph J. Krska	40	Nathan J. Kaplan
16	Paul M. Sheridan	41	Edward T. Scholl
17	Charles Chew, Jr.	42	Mayer Goldberg
18	James C. Murray	43	Mathias Bauler
19	Thomas F. Fitzpatrick	44	Thomas Rosenberg
20	Kenneth E. Campbell	45	Edwin P. Fifielski
21	Samuel Yaksic	46	Joseph R. Kerwin
22	Otto F. Janousek	47	John J. Hoellen
23	George J. Tourek	48	Robert J. O'Rourke
24	George W. Collins**	49	Paul T. Wigoda
25	Vito Marzullo	50	Jack I. Sperling

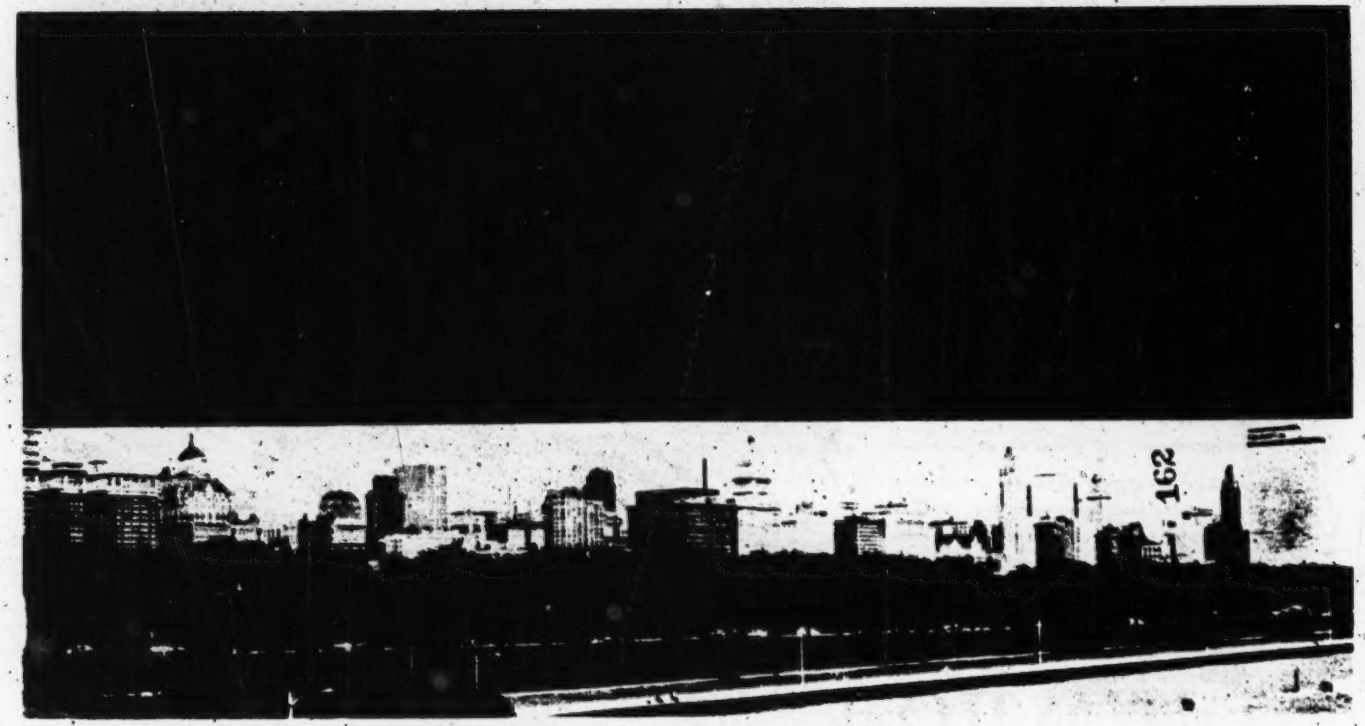
Robert F. Campbell, Record Clerk — **William F. Harrah, Sergeant-at-Arms**

Clement J. McDermott, Assistant Sergeant-at-Arms

Michael Coletta, Assistant Sergeant-at-Arms — **Alec Busta, Assistant Sergeant-at-Arms**

**Elected January 21, 1964—Formerly Stanley J. Nowakowski, deceased September 21, 1963.*
***Elected January 21, 1964—Formerly Benjamin F. Lewis, deceased February 28, 1963.*
****Deceased March 4, 1*

[fol. 95]



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FORWARD

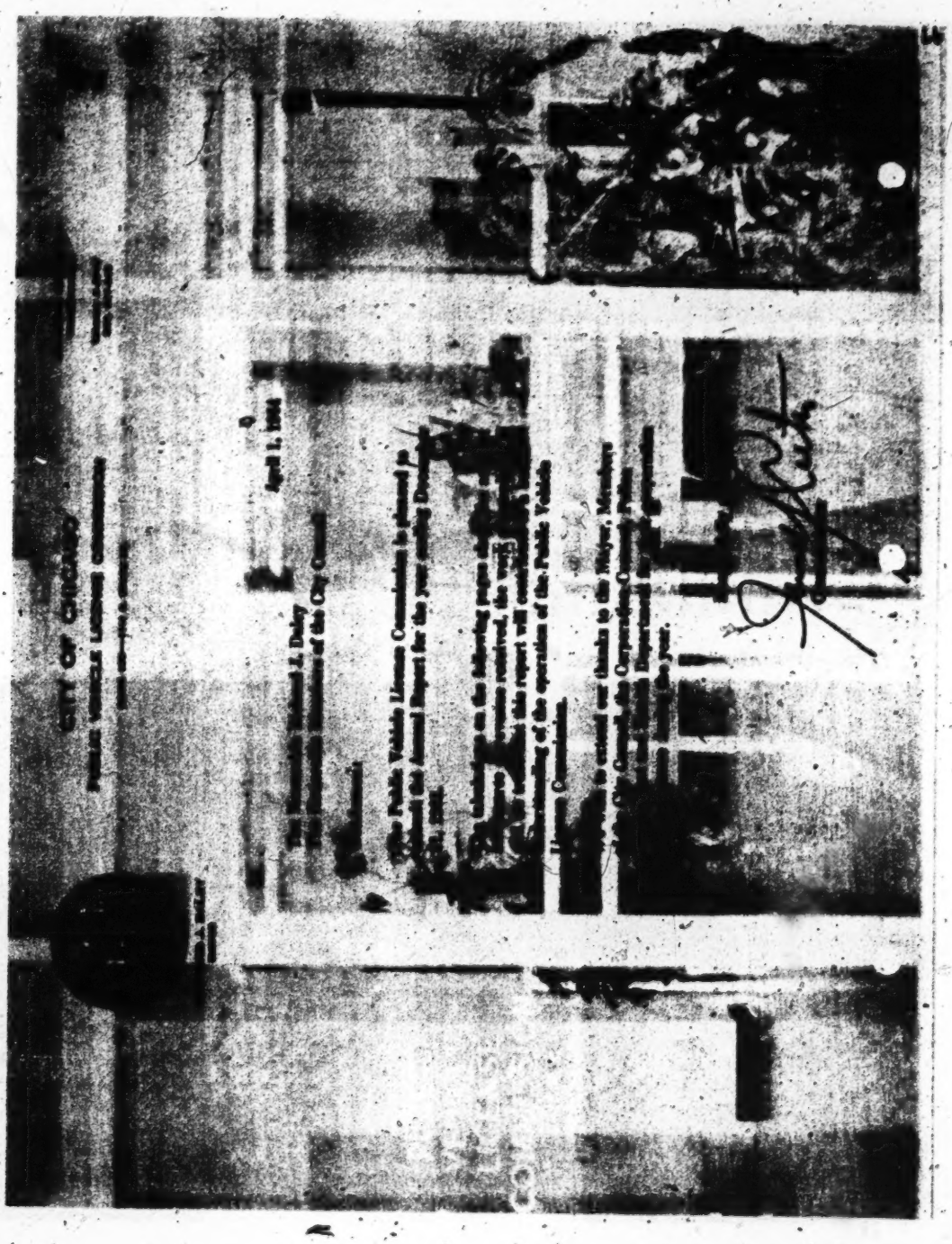
In 1934, when the Public Vehicle License Commission was first established, our city was recovering from the great depression. There were 4108 licensed taxicabs on Chicago streets but no one involved in their operation could possibly foresee the changes and advances that have been necessary to meet the tremendously increased demands of today's traffic.

Airline travel was practically non-existant and certainly of no real concern to the newly established Public Vehicle License Commission. Today the operation at Chicago-O'Hare International Airport is one of the major taxicab dispatching centers in the world.

There were no hack files on the drivers and no one could have thought in 1934 of the gigantic and constant task now involved in the filing and indexing of these important records.

This year's annual report includes a trace of nostalgia for those who can remember some of the old taxicabs, and a reminder to all of this aspect of Chicago's ever progressing scene.

[fol. 97]



LOST AND FOUND

This section was organized in 1961 with gratifying results. It has always been a problem because of the many elements involved in handling recovered articles where the loser is generally a visitor to Chicago. Formerly chauffeurs were required to bring recovered articles to the Commission Office, entailing the loss of time to them, which was a deterrent to reporting recovered articles. Inventories had to be maintained, the problem of storage and the disposal of uncalled for articles are some of the fallacies of the old system. We have learned from experience that the time element in reporting lost and recovered articles influenced the percentage of recoveries. A survey of this activity indicated that losses that occurred after normal business hours showed the lowest rate of recovery. People losing articles and stopping over only between trains or planes would necessarily have to correspond with this office by letter after reaching their final destination. To improve this service to the traveling public we have installed an electronic secretary that records all lost and found reports from the close of one business day until the opening of the next. All air, rail and bus lines, hotels, motels and police agencies have been informed of this service. Chauffeurs are required by rule No. 9 of the Public Vehicle License Commission to telephone the Commission's Office IMMEDIATELY on recovery of passenger's property.

RULE NO. 9, states:

(a) *"The chauffeur of a taxicab shall thoroughly search the interior of the vehicle immediately at the termination of each trip."*

(b) *"All taxicab chauffeurs shall be required to report to the public vehicle license commission, telephone WAbash 9-4747, Ext. 641, immediately on the finding of any package, article, baggage or goods of any kind left in the vehicle of which he is in charge."*

Chauffeurs are instructed to hold this property pending the matched reports of loss, when this is done chauffeurs will be instructed to proceed directly to the owner of the property. In this manner we hope to reduce the worry and loss of time sustained by the traveling public.

In the short period of this instrument's operation we have increased recovery in this area by 85%.

REVENUE STATISTICS

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Livery Licenses	333	$40.00	$ 13,320.00
Taxicab Licenses	4600	60.00	276,000.00
Transfer Fee	189	50.00	9,450.00
Replacement Metal Plate	1447	1.00	1,447.00
Duplicate Metal Plate	16	2.00	32.00
Suspended Metal Plate	53	5.00	265.00
Sightseeing Buses	20	150.00	3,000.00
Transfer Vehicles	23	Various	
School Vehicles (Class No. 1)	6	5.00	30.00
School Vehicles (Class No. 2)	135	10.00	1,350.00
School Vehicles (Class No. 3)	6	25.00	150.00
Duplicate Decals	28	1.00	28.00
Chauffeur Licenses (Original)	4837	5.00	24,185.00
Chauffeur Licenses (Renewal)	9192	3.00	27,576.00
Chauffeur Applications	9894	3.00	29,682.00
			$385,689.00

*Monies deposited in the United States District Court ..... $ 1,630.00

PUBLIC PASSENGER VEHICLE LICENSES

Taxicab	4,600
Livery	333
School Vehicle	147
Terminal	20
Sightseeing Bus	20
TOTAL	5,120

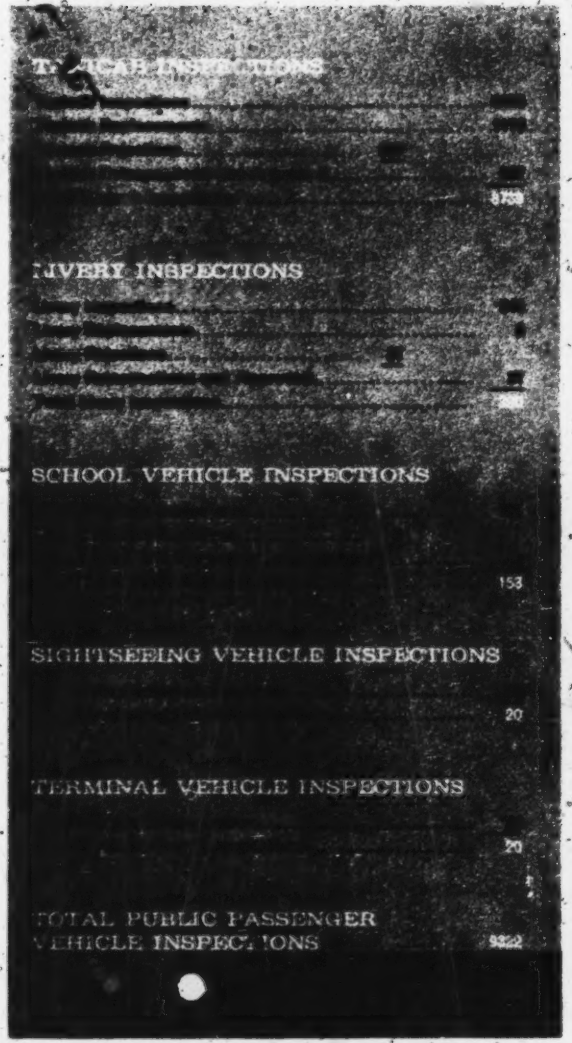
PUBLIC CHAUFFEUR LICENSES

Original	4,837*
Renewal	9,192
TOTAL	14,029**

*Out of a total of 4,837 original applications 376 were denied 376

**Out of a total of 14,029 applications—an additional 369 had applied and were rejected on medical 369

[fol. 99]



PUBLIC VEHICLE DEFINITIONS

"TAXICAB" means a public passenger vehicle for hire only at lawful rates of fare recorded and indicated by taximeter in operation when the vehicle is in use for transportation of any passenger.

"LIVERY VEHICLE" means a public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance.

"SCHOOL VEHICLE" means a vehicle which, for direct or indirect compensation, transports children to or from any school, day nursery, day care center, day camp, play group or any regularly conducted public or private educational, religious, recreational or care program. This definition shall include motor vehicles of any body style so used, whether operated by the school or other institution, association or enterprise as defined above or by an independent operator and shall include such vehicles whether the fee or cost for such transportation is paid to the owner of vehicle directly by such children or their parents or guardians, or paid by the sponsoring school, association or enterprise, whether on a per trip or other basis. All public carriers certificated by the Illinois Commerce Commission and all vehicles belonging to the Chicago Transit Authority are not included in this definition.

"SIGHTSEEING VEHICLE" means a public passenger vehicle for hire principally on sightseeing tours at a charge or fare per passenger for each tour fixed by agreement in advance or for hire otherwise at a charge for each vehicle per trip fixed by agreement in advance.

"TERMINAL VEHICLE" means a public passenger vehicle which is used exclusively by a coachman under contract with railroad or steamship carriers for the transfer of their passengers and hand baggage enroute in interstate travel between railroad terminals and steamship docks pursuant to through route published tariffs.

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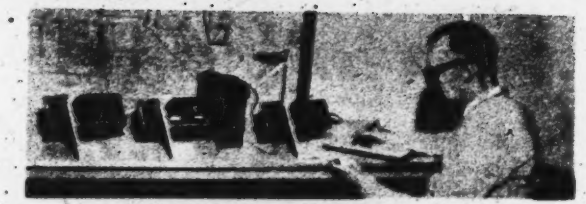
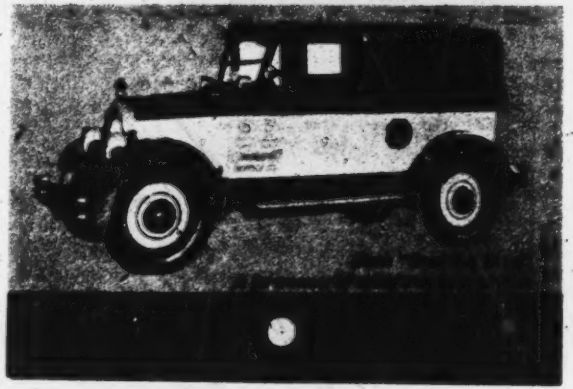
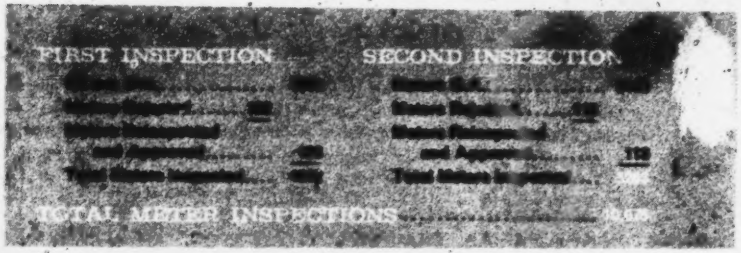


Bench Testing of Taximeters

In-Service Taximeter Check





TAXIMETER INSPECTIONS

Chapter 28, Section 25 of the Municipal Code of Chicago provides that each taximeter must be inspected semi-annually. The taximeter shall be inspected and tested by the Commission to determine if it complies with the specifications and accurately registers the lawful rates and charges. If it is in proper condition for use, the taximeter shall be sealed and a written certificate of inspection shall be issued by the commissioner to the cabman. Upon complaint by any person that a taximeter is out of working order or does not accurately register the lawful rates and charges it shall be again inspected and tested and, if found to be in improper working condition or inaccurate, it shall be unlawful to operate the taxicab to which it is attached until it is equipped with a taximeter which has been inspected and tested by the Commission.

The taximeter may be delivered attached or detached from the taxicab for inspection and test as requested by the Commissioner.

Taximeters have been called the heart of the taxicab industry—as they beat—the livelihood of those dependent upon its registration are affected.

It is the Commission's duty to see that these registrations are accurate and in keeping with the fare structure authorized by ordinance.

There are two methods used in testing these meters, that of actual road testing of the individual vehicle and bench testing of the meter. Recently one of the Commission's vehicles was equipped with a meter so that spot road checks can be made of taxicabs while they are in actual service (pictured at left).

[fol. 101]

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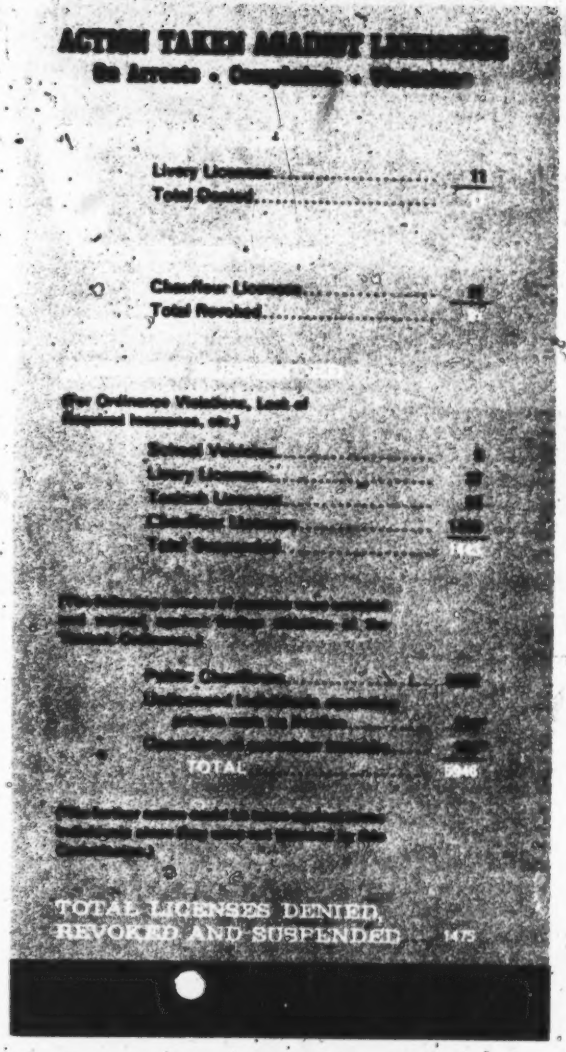

HEARINGS OF LICENSEES

Hearings are conducted by the Commission on chauffeur violations either as observed by police officers attached to the Vehicle Unit or on complaints by passengers, or in review of suspensions or revocations of public chauffeur licenses.

These hearings were originally designed to alleviate the burden on the Municipal Court where minor infractions were involved. While this remains true, today it is viewed more in the educational sphere. We feel that it takes more than issuing a chauffeur's license and a purchase of the uniform to transpose "JOHN CITIZEN" into a professional taxicab chauffeur, consequently these hearings have taken on an educational atmosphere rather than one of disciplinary action.

We feel there has been a deficiency in the chauffeur's indoctrination into his chosen field despite the issuance of rule books, safety programs, etc. Generally a first offense in any area of the ordinance or rules results in an automatic warning to the offender unless unusual circumstances warrant disciplinary action. Second offenders are given one day suspension of their driving privileges. Reviewing the past three years results indicate that this program has proved very effective:

RULE NO. A-1 HEARINGS

Hearings conducted by the Commission for taxicab violations will be held on Mondays and Thursdays at 10:00 A.M. and 2:00 P.M. Tape records of these hearings will be made if it is agreeable to all parties concerned. Tapes will be maintained for one year from date of recording:

Chauffeurs accused of a violation are entitled to:

(a) Be represented by counsel where desired.

(b) Request presence of police officer issuing summons at the hearing. In such cases continuing date will be set and driving permit extended to such date.

(c) In passenger complaints, defendant may request the complainant's presence at hearing whenever complainant is available.

(d) Where circumstances arise that will not permit chauffeur's appearance at designated time of hearing, a continuance will be granted, provided that a personal appearance is made at the commissioner's office on designated date so that same can be noted on summons.

(e) Failure to appear at hearing on designated date and time, or to secure continuance date on violator's copy, voids driving privilege as of original date set for hearing.

PENALTY

If any chauffeur shall violate any order, rule or regulation of the commissioner relating to the administration or enforcement of Chapter 28, the commissioner may suspend the chauffeur license for a period of from 1 to 30 days.

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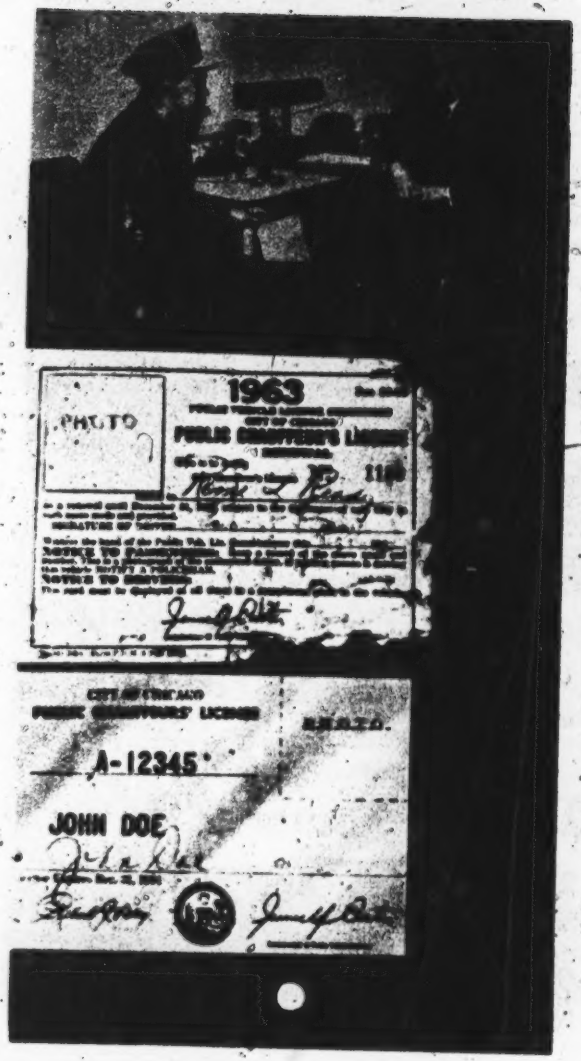
[fol. 102]



PUBLIC CHAUFFEUR'S LICENSE

Chapter 28.1-7 of the Municipal Code of the City of Chicago provides that every chauffeur upon taking possession of a livery or taxicab for operation in transportation of passengers for hire shall insert in the frame provided therefor his license and photograph as an exhibit for view by passengers. This important facet of the taxicab industry has caused much concern in the past because of thefts and forgeries. The culmination of two years planning was witnessed December 15, 1963 when the first application for a 1964 public chauffeur's license was processed.

The Commission decided to plasticize the public chauffeur's license in an effort to reduce the reported losses and thefts of these licenses (1000 in 1963) which have been mounting annually with resultant problems of these licenses falling into the hands of unqualified persons and to give the riding public the protection that this type of identification affords.

The entire issuance procedure has been revamped from photo identification albums to the IBM records which can now be correlated with our driver control program which was inaugurated in 1962 and will permit the issuance of a permanent chauffeur's license number to each applicant.

[fol. 103]

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100
[fol. 104]

The Public Vehicle License Commission, in keeping with other City Departments charged by Mayor Richard J. Daley to give Chicago-O'Hare International Airport a second-to-none reputation, began laying plans for a taxicab service when this great facility was still on the drawing board.

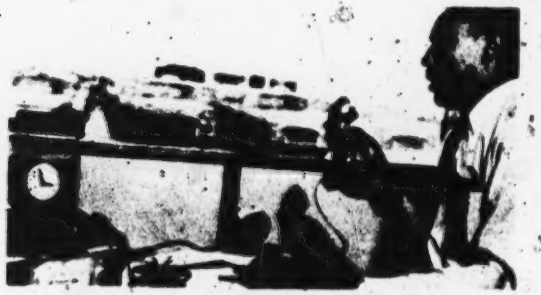
Drawing on its experience at Midway as well as the surveys made in conjunction with other large cities, plans were made for the passenger load then being handled by propeller-driven aircraft when we were suddenly confronted with the Jets and their increased passenger carrying capacity.

Providing adequate taxicab service to a facility 19 miles from the Loop and servicing 254 cities, towns and villages surrounding Chicago-O'Hare International Airport required the ultimate in planning.

The fare structure for urban travel of 25 cents per mile was inadequate to compensate the chauffeur for the dead mileage that he would accrue returning to the airport from these suburban areas—routes to and from these areas presented a problem to chauffeurs only required to be familiar with city streets. Highways and Expressways under construction added to this problem. Surveys were made by independent agencies called in to assist in this planning and as a result of their recommendations routes to these 254 cities, towns and villages were established and a flat rate of 40 cents per mile from Chicago-O'Hare International Airport to the physical centers of these areas were recommended, with the passenger paying toll charges, if any.

To provide convenient parking facilities for private cars it was found necessary to store taxicabs in the extreme end of the parking area, a distance of ¾ of a mile from the loading platforms. This presented a dispatching problem that was quickly solved by the installation of short-wave radios augmented when necessary with walkie-talkie equipment. This system maintains sufficient taxicab strength to the three loading points at all times. A recent check of taxicab loading records indicated a peak period of 361 taxicabs dispatched in one hour without incident. Daily taxicab loads have increased from a 900 average in 1962 to a 1700 average in 1963. Recently an abnormal peak of *3239* was hit!

Vehicle Officer Checking Sign-In Sheet.



Dispatching Taxicabs From Staging Area

It was decided that taxicabs entering Chicago-O'Hare International Airport with or without passengers would be required to use the upper ramp. Discharge of departing passengers is made on the upper level; empty taxicabs are required to stay to the left and enter storage area, lining up from right to left, moving up in platoon front formation. Staging area No. 1 provides space for 115 taxicabs. Staging in Area No. 2 is sufficient to store 75 additional taxicabs. Each chauffeur on reaching the first platoon must register his taxicab number on sign-in sheet for identification purposes. These sheets are inspected and signed by the Vehicle Officer every hour on the hour. This procedure is of inestimable value in the tracing of complaints or lost baggage. Chauffeurs whose vehicles have reached the front line are required to stay within close proximity of their taxicabs so that when dispatched there is minimum of time lost in arriving at their assigned loading point. Because of rate and route problems dispatchers are on duty at all times at each of the loading platforms. Each potential passenger entering taxicab loading zone is asked his destination by a taxicab starter; if the destination is in a suburban area, starter provides the passenger with one of the 29 rate and route cards that indicate the correct route to be traveled by the chauffeur and the established rate of fare for the trip and toll charges.

Starter Issuing One Of the 29 Suburban Rate and Route Cards That Indicate The Correct Route and Rate of Fare.

Continued

Startir Calling Up More Cabs To Loading Zone. Cabs are sent from large capacity staging areas.

The starter is the key man in keeping this operation running smoothly. He is limited to the number of taxicabs he can store at this loading platform; he must be mindful of passengers' luggage left unattended; issue rate and route cards; issue instructions to chauffeurs who may be making their first run to an unfamiliar suburb; issue short-trip tickets when a passenger's destination falls within that category; summon additional taxicabs from the storage area at a rate that will not clog transportation lanes, yet sufficient in number to keep passengers' waiting time at a minimum.

While most airports are generally beset by the same problems transportationwise, Chicago-O'Hare International developed a unique problem—the sudden expansion of motels, manufacturing plants and population explosions in suburban towns created the "SHORT-TRIP DILEMMA," the bane of all taxicab chauffeurs. It is possible for a chauffeur to sit three hours in storage and holding area and suddenly be confronted with a passenger who may bring the chauffeur's world crashing down with a simple statement—"TO THE PARKING LOT"—a 70-cent run, or—"TO BUILDING NO. 2"—a 40-cent run, or a $1.40 run to a nearby suburb and he may imagine, and rightfully so, that the chauffeur ahead of him or to the rear was hearing the sweetest words—"TO THE LOOP"—a 25-minute run over the Kennedy Expressway for a fare of $5.25. A recent survey indicates it happened 390 times in a 24-hour period.

Chauffeur Signing Short Trip Report.

Making an ordinance or regulation that would require a company or a chauffeur to service a location 19 miles from the heart of the city would border on the impossible. The solution had to be made quickly and judiciously. Failing in this we would have been confronted with a high incidence of passenger complaints and the refusal of the chauffeurs to service this facility. The "SHORT-TRIP PLAN" was put into effect and it provided that a chauffeur being apprised by a passenger that his destination would fall within a $2.50 area would be supplied with a short-trip ticket from the dispatcher who on verifying the destination with passenger would issue such ticket. The ticket, the color of which is changed every day, and is numbered, is stamped by the dispatcher at time of departure from airport. The driver must enter his cab number, the destination of fare and fare collected on this ticket. A time allowance of 35 minutes has been set, permitting a check by dispatchers on the $2.50 limit. On his return to the storage area, dispatcher in charge inspects and time stamps ticket; if driver has qualified he is directed to the short-trip line from which he will be dispatched without delay on the next call for additional taxicabs at the loading platforms. This system, while it must be under constant supervision, has given the O'Hare Field cab line its highest accolade "FAIR PLAY" from its severest critics—CHICAGO'S 14,000 TAXICAB CHAUFFEURS.

Evaluating Supply Of Cabs With Demand For Service

It is uppermost in the Commission's mind that the taxicab driver treated fairly can be an invaluable asset to our Chamber of Commerce in displaying Chicago's wares to our visitors. This is borne out by the many letters of commendation from our visitors and the steady decrease in passenger complaints from Chicago-O'Hare International Airport.

Our effort in meeting the Mayor's request has been greatly aided by the cooperation of the Department of Aviation, Chicago Police Department, Taxicab Companies, Associations, Independent Operators, Chauffeurs Unions and Associations for which we say a cooperative THANKS.

EXHIBIT VI

100-Corporate Fund

PUBLIC VEHICLE LICENSE COMMISSION

DISTRIBUTION OF APPROPRIATIONS BY ORGANIZATIONAL ACTIVITIES

ORGANIZATIONAL ACTIVITY	Year	Number of Positions	Personal Services	Contractual Services	Travel	Commodities	Contingencies	Specific Purposes	Total Operating Expense	Capital Outlay	Total Appropriation
Regulation of Public Vehicle Operation	1960	22	$ 117,583	$ 2,300	$ 1,500	$ 4,400	———	———	$ 125,783	$ 2,500	$ 128,283
	1959	22	$ 114,432	$ 2,300	$ 1,956	$ 4,440	———	———	$ 123,088	$ 3,000	$ 126,088

PERFORMANCE DATA

		WORK UNITS			PERSONNEL						OPERATING COSTS			
		Number			Number		Man-Hours		Man-Hours Per-Unit		Total for Year		Av. Cost Per-Unit	
ACTIVITY AND SUB-ACTIVITY	Name	Est. 1960	Budget 1959	Act. 1958	1960	1959	1960	1959	1960	1959	1960	1959	1960	1959
Regulation of Public Vehicle Operations														
01 Administrative and clerical	Application	———	———	———	6	6	10,920	8,645	———	———	$ 42,802	$ 38,291	———	———
02 Licensing vehicle operation	Inspection	16,000	16,000	16,409	6	6	10,920	12,195	.68	.82	31,457	34,263	$1.96	$2.14
03 Inspecting public vehicles	Meter	10,500	9,000	8,771	6	6	10,920	10,920	1.04	1.21	32,182	31,915	3.06	3.65
04 Inspecting taxicab meters		9,400	8,200	7,482	4	4	7,280	7,280	.77	.89	19,342	18,519	1.96	2.26
Total					22	22	40,040	40,040			$ 125,783	$ 123,088		

PUBLIC VEHICLE LICENSE COMMISSION

DISTRIBUTION OF APPROPRIATIONS BY ORGANIZATIONAL ACTIVITIES

CODE	ORGANIZATIONAL ACTIVITY	Year	Number of Positions	Personal Services	Contractual Services	Travel	Commodities	Contingencies	Specific Purposes	Total Operating Expense	Capital Outlay	Total Appropriation
4550	Regulation of Public Vehicle Operation.	1961	38	$ 122,560	$ 3,500	$ 1,500	$ 9,500	———	———	$ 142,060	$ 2,500	$ 150,060
		1960	32	$ 117,508	$ 2,500	$ 1,500	$ 4,400	———	———	$ 125,708	$ 2,500	$ 128,208

PERFORMANCE DATA

ACTIVITY AND SUB-ACTIVITY	Name	WORK UNITS Number			PERSONNEL Number		PERSONNEL Man-Hours		PERSONNEL Man-Hours Per Unit		OPERATING COSTS* Total for Year		OPERATING COSTS* Av. Cost Per Unit	
		Est. 1961	Budget 1960	Act. 1959	1961	1960	1961	1960	1961	1960	1961	1960	1961	1960
4550 Regulation of Public Vehicle Operations														
01 Administrative and clerical	Application	———	———	———	7	6	12,740	10,920	———	———	$ 59,916	$ 42,908	———	———
02 Licensing vehicle operation	Inspection	15,000	16,000	13,719	6	6	10,920	10,920	.73	.68	34,720	31,457	$2.31	$1.96
03 Inspecting public vehicles	Meter	10,000	10,000	9,000	6	6	10,920	10,920	1.09	1.04	22,592	22,192	2.17	2.08
04 Inspecting taxicab meters		9,000	9,400	7,007	4	4	7,280	7,280	.77	.77	19,236	18,542	2.69	1.96
Total					23	22	41,860	40,040			$ 142,060	$ 125,708		

EXHIBIT VIII

100-Corporate Fund

PUBLIC VEHICLE LICENSE COMMISSION

DISTRIBUTION OF APPROPRIATIONS BY ORGANIZATIONAL ACTIVITIES

CODE	ORGANIZATIONAL ACTIVITY	Year	Number of Positions	Personal Services	Contractual Services	Travel	Commodities	Contingencies	Specific Purposes	Total Operating Expense	Capital Outlay	Total Appropriation
4850	Regulation of Public Vehicle Operation	1962	22	$ 139,298	$ 6,750	$ 1,956	$ 10,400	$ 1,000	.....	$ 158,394	$ 9,000	$ 168,394
		1961	22	$ 132,569	$ 3,500	$ 1,500	$ 9,900	.....	.....	$ 148,069	$ 2,000	$ 150,069

PERFORMANCE DATA

	ACTIVITY AND SUB-ACTIVITY	WORK UNITS Name	WORK UNITS Number Est. 1962	WORK UNITS Number Budget 1961	WORK UNITS Number Act. 1960	PERSONNEL Number 1962	PERSONNEL Number 1961	PERSONNEL Man-Hours 1962	PERSONNEL Man-Hours 1961	PERSONNEL Man-Hours Per Unit 1962	PERSONNEL Man-Hours Per Unit 1961	OPERATING COSTS Total for Year 1962	OPERATING COSTS Total for Year 1961	OPERATING COSTS Av. Cost Per Unit 1962	OPERATING COSTS Av. Cost Per Unit 1961
4850	Regulation of Public Vehicle Operations:														
01	Administrative and clerical		____	____	____	7	7	12,740	12,740	____	____	$ 64,746	$ 59,918	____	____
02	Licensing vehicle operation	Application	15,000	15,000	14,527	6	6	10,920	10,920	.73	.73	36,569	34,729	$2.44	$2.32
03	Inspecting public vehicles	Inspection	10,000	10,000	9,755	6	6	10,920	10,920	1.09	1.09	36,031	33,538	3.60	3.37
04	Inspecting taxicab meters	Meter	9,500	9,500	9,400	4	4	7,280	7,280	.77	.77	20,996	19,836	2.15	2.09
	Total					23	23	41,860	41,860			$ 158,394	$ 148,069		

PUBLIC VEHICLE LICENSE COMMISSION

DISTRIBUTION OF APPROPRIATIONS BY ORGANIZATIONAL ACTIVITIES

CODE	ORGANIZATIONAL ACTIVITY	Year	Number of Positions	Personal Services	Contractual Services	Travel	Commodities	Contingencies	Specific Purposes	Total Operating Expense	Capital Outlay	Total Appropriation
4850	Regulation of Public Vehicle Operation	1962	22	$ 142,962	$ 5,100	$ 1,956	$ 8,100	$ 1,000	———	$ 160,119	$ 2,000	$ 162,119
		1961	22	$ 139,288	$ 6,750	$ 1,956	$ 10,400	$ 1,000	———	$ 159,394	$ 2,000	$ 161,394

PERFORMANCE DATA

	ACTIVITY AND SUB-ACTIVITY	Name	WORK UNITS Number Est. 1962	Number Budget 1962	Number Act. 1961	PERSONNEL Number 1962	Number 1961	Man-Hours 1962	Man-Hours 1961	Man-Hours Per Unit 1962	Man-Hours Per Unit 1961	OPERATING COSTS Total for Year 1962	Total for Year 1961	Av. Cost Per Unit 1962	Av. Cost Per Unit 1961
4850	Regulation of Public Vehicle Operations:														
01	Administrative and clerical	———	———	———	———	7	7	12,740	12,740	———	———	$ 97,708	$ 94,766	———	———
02	Licensing vehicle operation	Application	15,000	15,000	14,692	6	6	10,920	10,920	.97	.73	35,056	36,569	$2.38	$2.45
03	Inspecting public vehicles	Inspection	12,000	10,000	10,418	6	6	10,920	10,920	1.01	1.06	26,751	26,621	2.24	2.46
04	Inspecting taxicab meters	Meter	5,700	5,000	5,382	4	4	7,280	7,280	.75	.77	20,604	20,306	2.19	2.15
	Total					23	23	41,860	41,860			$ 160,119	$ 159,394		

Department of Police—*Continued*

PERFORMANCE DATA—Continued

	ACTIVITY AND SUB-ACTIVITY	Name	WORK UNITS Number Est. 1960	Budget 1959	Act. 1958	PERSONNEL Number 1960	1959	Man-Hours 1960	1959	Man-Hours Per Unit 1960	1959	OPERATING COSTS Total for Year 1960	1959	Av. Cost Per Unit 1960	1959
07	Conducting special investigations	Investigation	600	615	591	2	2	4,160	4,160	6.93	6.76	$ 12,524	$ 11,630	$22.05	$18.94
08	Permits checked and issued	Permit	4,575	4,575	4,589	1	1	2,080	2,080	.45	.45	7,167	6,965	1.57	1.36
	Sub-Total					343	353	755,040	782,160			2,286,976	2,012,292		
4118	Traffic Direction and Safety:														
01	Administrative and clerical		———	———	———	119	123	247,520	276,640	———	———	788,094	920,069	———	———
02	Accident reports processed	Report	105,000	100,000	98,511	23	30	47,840	62,400	.44	.62	92,230	107,864	.86	1.08
03	Accident reports requested	Report	90,000	90,000	76,034	5	11	12,480	22,880	.14	.25	30,564	44,842	.34	.49
04	Traffic tickets processed	Ticket	1,450,000	1,400,000	1,316,122	82	46	170,560	95,680	.12	.07	216,418	196,008	.22	.14
05	Traffic warrants processed	Warrant	45,000	60,000	39,130	4	4	8,320	8,320	.18	.13	16,236	14,248	.36	.24
06	Arrest notifications made	Notification	135,000	140,000	126,182	5	6	10,400	12,480	.08	.09	22,296	22,432	.17	.17
07	Breathalizer tests given	Test	5,000	5,016	4,474	17	17	35,360	35,360	7.07	7.05	97,280	94,255	19.46	18.79
08	Parking meter complaints handled	Complaint	9,000	9,100	7,588	2	2	4,160	4,160	.46	.47	12,030	11,250	1.34	1.24
09	Pictures developed and printed	Picture	7,000	6,466	6,761	2	2	4,160	4,160	.59	.64	12,280	11,250	1.77	1.71
10	Regulating traffic at fixed posts and intersections	Assignment	35,000	35,616	29,493	198	211	411,840	438,880	11.77	12.32	1,136,348	1,225,220	32.47	37.21
11	Regulating traffic by cycle force		———	———	———	152	176	316,160	366,080	———	———	875,582	1,182,454	———	———
12	Enforcing and patrolling by motor force		———	———	———	405	450	842,400	936,000	———	———	2,226,120	2,308,965	———	———
13	Controlling speed by radar		———	———	———	24	33	49,920	68,640	———	———	137,516	186,776	———	———
14	Investigating hit-and-run offenses	Case	15,000	13,500	13,624	32	30	66,560	62,400	4.44	4.62	123,516	167,065	12.23	12.28
15	Investigating car towing cases	Case	8,500	10,000	10,360	19	19	39,520	39,520	4.65	3.95	104,200	106,205	12.26	10.62
16	Public vehicle assignments	Assignment	13,000	8,300	8,924	24	24	70,720	49,920	5.44	6.02	186,050	284,050	14.31	16.15
17	Processing outstanding warrants	Warrant	37,000	37,500	31,938	31	26	64,480	54,080	1.74	1.44	169,872	145,255	4.59	3.87
18	Conducting safety education and training	Person	342,000	300,000	216,312	21	18	43,680	37,440	.13	.12	116,500	103,200	.34	.34
19	Planning operating procedures		———	———	———	3	3	6,240	6,240	———	———	18,532	18,005	———	———
20	Photostat copies made	Photostat	17,160	19,000	14,230	2	2	4,160	4,160	.24	.22	13,692	13,905	.80	.73
21	Courtroom assignments		———	———	———	19	11	39,520	22,880	———	———	118,176	62,975	———	———
	Sub-Total					1,200	1,254	2,496,000	2,629,120			6,674,359	7,144,764		
	Total							24,608,960	24,288,400			$71,580,413	$67,462,381		

[fol. 112]
EXHIBIT X
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Department of Police—*Continued*

PERFORMANCE DATA—Continued

ACTIVITY AND SUB-ACTIVITY	Name	WORK UNITS Number Est. 1961	Budget 1962	Act. 1959	PERSONNEL Number 1961	1960	Man-Hours 1961	1960	Man-Hours Per Unit 1961	1960	OPERATING COSTS Total for Year 1961	1960	Av. Cost Per Unit 1961	1960
4184 Traffic Personnel Services		—	—	—	3	—	6,240	—	—	—	$ 20,496	—	—	—
4185 Traffic Planning Services		—	—	—	5	—	10,400	—	—	—	34,022	—	—	—
4186 Conducting Traffic Investigations:														
01 Supervisory and Clerical		—	—	—	2	—	4,160	—	—	—	15,949	—	—	—
02 Investigating Hit and Run Cases	Case	21,000	—	—	34	—	70,720	—	3.37	—	217,896	—	$10.37	—
03 Investigating Car Towing Cases	Case	12,100	—	—	2	—	4,160	—	.34	—	12,720	—	1.05	—
04 Investigating Public Vehicle Cases	Assignment	13,000	—	—	34	—	70,720	—	5.44	—	213,448	—	16.42	—
05 Serving Traffic Warrants	Warrant	26,000	—	—	84	—	174,720	—	6.72	—	322,196	—	20.06	—
Sub-Total					150		324,480				981,905			
4187 Area Traffic Enforcements:														
01 Supervisory and Clerical		—	—	—	122	—	253,760	—	—	—	909,544	—	—	—
01 Investigating Traffic Accidents	Accident	110,000	—	—	225	—	468,000	—	4.24	—	1,410,704	—	12.82	—
03 Enforcing Motor Vehicle Regulations	Vehicle	41	—	—	119	—	247,520	—	6,037	—	729,497	—	17,792	—
04 Enforcing Parking Regulations		—	—	—	115	—	239,200	—	—	—	704,504	—	—	—
Sub-Total					581		1,208,280				3,754,250			
4188 Loop Intersection Control	Intersection	94	—	—	184	—	382,720	—	4,071	—	1,164,418	—	12,387	—
4189 Controlling Traffic by Radar		—	—	—	24	—	49,920	—	—	—	127,620	—	—	—
Total					13,272		25,000,100			—	$81,254,949			

100-Corporate Fund

Department of Police—*Continued*

PERFORMANCE DATA—Continued

	ACTIVITY AND SUB-ACTIVITY	Name	WORK UNITS Number Est. 1962	Budget 1961	Act. 1960	PERSONNEL Number 1962	1961	Man-Hours 1962	1961	Man-Hours Per Unit 1962	1961	OPERATING COSTS Total for Year 1962	1961	Av. Cost Per Unit 1962	1961
183	Performing Special Traffic Services:														
01	Supervisory and clerical		—	—	—	2	—	4,160	—	—	—	$ 15,901	—	—	—
02	Providing traffic division		—	—	—	2	—	4,160	—	—	—	12,038	—	—	—
03	Performing photographic services		—	—	—	2	—	4,160	—	—	—	20,726	—	—	—
04	Handling parking meter complaints	Complaint	10,000	8,500	—	2	—	4,160	2,000	.42	.24	12,038	$ 6,240	$1.20	$ .73
05	Performing courtroom assignments	Assignment	15	—	—	26	—	54,080	—	3,605	—	172,235	147,516	11,482	—
06	Conducting breathalyser tests	Test	6,000	5,700	—	17	—	35,360	35,360	5.89	6.20	112,463	108,120	18.74	18.97
	Sub-Total					—	—	106,080	—			346,961	—		
4	Traffic Personnel Services		—	—	—	5	3	10,400	6,240	—	—	21,695	20,496	—	—
5	Traffic Planning Services:														
2	General planning		—	—	—	5	—	10,400	—	—	—	36,771	—	—	—
3	Conducting intersection surveys	Each	705	—	—	5	—	10,400	—	14.75	—	34,011	—	48.24	—
	Sub-Total					10	5	20,800	10,400			70,782	34,632		
	Conducting Traffic Investigations:														
	Supervisory and clerical		—	—	—	2	2	4,160	4,160	—	—	16,236	15,240	—	—
	Investigating hit and run cases	Case	22,000	21,000	—	36	34	74,880	70,720	3.36	3.37	241,201	217,896	10.69	10.27
	Regulation of public passenger vehicle licenses	License	24,000	—	—	47	—	97,760	—	4.07	—	308,701	—	12.86	—
	Handling warrant inquiries	Inquiry	118,000	—	—	12	—	24,960	—	.21	—	42,027	—	.36	—
	Serving traffic warrants	Warrant Received	45,000	36,000	—	78	84	162,240	174,720	3.58	6.72	507,908	522,198	11.29	20.06
	Sub-Total					175	156	364,000	324,480			1,116,253	961,902		

100-Corporate Fund

Department of Police—*Continued*

PERFORMANCE DATA—Continued

ACTIVITY AND SUB-ACTIVITY	Name	WORK UNITS Number Est. 1963	Budget 1963	Act. 1961	PERSONNEL Number 1962	1963	Man-Hours 1963	1962	Man-Hours Per Unit 1962	1963	OPERATING COSTS Total for Year 1962	1963	Av. Cost Per Unit 1962	1963
03 Regulation of public passenger vehicle licenses	License	24,000	24,000	———	48	47	99,840	97,760	4.16	4.07	$ 199,532	$ 206,701	$8.31	$12.86
04 Handling warrant inquiries	Inquiry	365,000	118,000	———	20	12	41,600	24,960	.11	.21	71,331	42,027	.20	.36
05 Serving traffic warrants	Warrant Received	40,000	45,000	———	71	78	147,680	162,240	3.69	3.36	462,053	507,988	11.55	11.29
Sub-Total					175	175	364,000	364,000			977,304	1,116,253		
4187 - Area Traffic Enforcement:														
01 Supervisory and clerical		———	———	———	129	122	229,120	274,560	———	———	1,096,526	986,781	———	———
02 Investigating traffic accidents	Accident Investigation	135,000	120,000	———	78	78	162,240	162,240	1.20	1.35	508,248	506,482	3.76	4.24
03 Enforcing motor vehicle regulation by squad car and patrolling		———	———	———	243	250	505,440	520,000	———	———	1,231,524	1,224,254	———	———
01 Enforcing motor vehicle regulation by 3 wheeler motorcycle		———	———	———	150	150	312,000	312,000	———	———	651,000	977,850	———	———
05 Participation in trials of offenders	Appearance	6,775	6,756	———	36	36	74,880	74,848	7.56	6.76	169,416	169,494	25.00	25.09
Sub-Total					636	636	1,323,680	1,323,648			3,697,218	4,278,861		
08 Loop Intersection Control	Intersection	182	89	———	188	175	391,040	364,000	2.534	3.677	1,394,883	1,142,585	12,401	11,841
09 Controlling Traffic by Radar		———	———	———	40	40	83,200	83,200	———	———	247,716	274,304	———	———
Total					13,846	13,849	27,023,680	26,992,608			$95,599,679	$95,976,264		

EXHIBIT XIV

LAW OFFICES
ALBERT J. MESEROW
CONTINENTAL ILLINOIS BANK BUILDING
231 SOUTH LA SALLE STREET
CHICAGO 4
STATE 2-2500

WASHINGTON 1, D. C.
888 S STREET, N. W.
EXECUTIVE 3-4440

August 12, 1959

Honorable William P. Flynn
Commissioner of Public Vehicles
Room 702 - 1121 S. State Street
Chicago, Illinois

Dear Commissioner Flynn:

Replying to your letter of July 27, 1959, with respect to the licensing of terminal vehicles owned and operated by Railroad Transfer Service, Inc., my client, I wish to advise you that my client operates twenty-six 12-passenger vehicles; five 21-passenger vehicles, one 19-passenger vehicle; one 25-passenger vehicle and one 29-passenger vehicle.

Based upon your proposed license fee of $40 per license, with a seating capacity of seven passengers, and $5 for each additional passenger capacity, the annual license fee, which would be paid by my client, would be approximately $2,700.

As you and the corporation counsel know, there must be a reasonable license fee enacted for the use of the streets in the City. The license fee cannot be exorbitant, prohibitive or beyond the scope of reasonableness. Taking into consideration the fact that the previous terminal vehicle license fee was only $25, plus the fact that my client purchases City vehicle licenses for each of these terminal vehicles, it is my opinion, and I have so advised my client, that your proposal is excessive and unreasonable.

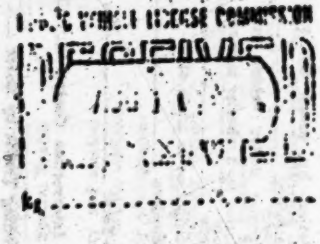
It is therefore my suggestion that you amend the proposed license fee to provide for a $40 license fee for a vehicle with a 12-passenger capacity, and $5 additional for each passenger capacity over twelve. This would be acceptable to my client.

Thanking you for your cooperation, I am

Yours very truly,

Albert J. Meserow

AJM:pd



*CHAPTER 28

PUBLIC PASSENGER VEHICLES

28- 1. Definitions
28- 2. License required
28- 3. Interurban operations
28- 4. Inspections
28- 4.1. Specifications
28- 5. Application
28- 6. Investigation and issuance of license
28- 7. License fees
28- 8. Renewal of licenses
28- 9. Personal license—fair employment practice
28-10. Emblem
28-11. License card
28-12. Insurance
28-13. Payment of judgments and awards
28-14. Suspension of license
28-15. Revocation of license
28-16. Interference with commissioner's duties
28-17. Front seat passenger
28-18. Notice
28-19. Livery vehicles
28-19.1. Taximeter prohibited
28-19.2. Solicitation of passengers prohibited
28-20. Livery advertising
28-21. Sightseeing vehicles
28-22. Taxicabs
28-22.1. Public convenience and necessity
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28-24. Taximeters
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28-28. Taxicab service
28-29. Group riding
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28-30. Taxicab fares
28-31. Terminal vehicle
28-31.1. Public convenience and necessity
28-31.2. Local fares
28-32. Penalty

Definitions

28-1. As used in this chapter:

"Busman" means a person engaged in business as proprietor of one or more sightseeing buses.

"Cabman" means a person engaged in business as proprietor of one or more taxicabs or livery vehicles.

"Chauffeur" means the driver of a public passenger vehicle licensed by the city of Chicago as a public chauffeur.

"City" means the city of Chicago.

"Coachman" means a person engaged in business as proprietor of one or more terminal vehicles.

"Commissioner" means the public vehicle license commissioner, or any other body or officer having supervision of public passenger vehicle operations in the city.

"Council" means the city council of the city of Chicago.

"Livery vehicle" means a public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance.

"Person" means a natural person, firm or corporation in his own capacity and not in a representative capacity, the personal pronoun being applicable to all such persons of any number or gender.

"Public passenger vehicle" means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting those devoted exclusively for funeral use or in operation of a metropolitan transit authority or public utility under the laws of Illinois.

"Sightseeing vehicle" means a public passenger vehicle for hire principally on sightseeing tours at a charge or fare per passenger for each tour fixed by agreement in advance or for hire otherwise at a charge for each vehicle per trip fixed by agreement in advance.

"Taxicab" means a public passenger vehicle for hire only at lawful rates of fare recorded and indicated by taximeter in operation when the vehicle is in use for transportation of any passenger.

"Taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers.

*For amendments to former Chapter 28 prior to its revision on 12-20-51, see footnote at end of this chapter.

"Terminal vehicle" means a public passenger vehicle which is operated exclusively for the transportation of passengers from railroad terminal stations and steamship docks to points within the area defined in section 28-31. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905; 7-26-55, p. 807.]

License required

28-2. It is unlawful for any person other than a metropolitan transit authority or public utility to operate any vehicle, or for any such person who is the owner of any vehicle to permit it to be operated, on any public way for the transportation of passengers for hire from place to place within the corporate limits of the city, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle.

It is unlawful for any person to hold himself out to the public by advertisement or otherwise as a busman, cabman or coachman or as one who provides or furnishes any kind of public passenger vehicle service unless he has one or more public passenger vehicles licensed for the class of service offered; provided that any association or corporation which furnishes call service for transportation may advertise the class of service which may be rendered to its members or subscribers, as provided in this chapter, if it assumes the liability and furnishes the insurance as required by section 28-23. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

Interurban operations

28-3. Nothing in this chapter shall be construed to prohibit any public passenger vehicle from coming into the city to discharge passengers accepted for transportation outside the city. While such vehicle is in the city no person shall solicit passengers therefor and no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire. A white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed on the windshield of the vehicle. Any person in control or possession of such vehicle who violates the provisions of this section shall be subject to arrest and fine of not less than fifty dollars nor more than two hundred dollars for each offense. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Inspections

28-4. No vehicle shall be licensed as a public passenger vehicle until it has been inspected under the direction of the commissioner and found to be in safe operating condition and to have adequate body and seating facilities which are clean and in good repair for the comfort and convenience of passengers. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Specifications

28-4.1. No vehicle shall be licensed as a livery vehicle or taxicab unless it has two doors on each side, and no vehicle having seating capacity for more than seven passengers shall be licensed as a public passenger vehicle unless it has at least three doors on each side or fixed aisle space for passage to doors. [Passed. Coun. J. 12-30-52, p. 3905.]

Application

28-5. Application for public passenger vehicle licenses shall be made in writing signed and sworn to by the applicant upon forms provided by the commissioner. The application shall contain the full name and Chicago street address of the applicant, the manufacturer's name, model, length of time in use, horse power and seating capacity of the vehicle applicant will use if a license is issued, and the class of public passenger vehicle license requested. The commissioner shall cause each application to be stamped with the time and date of its receipt. The applicant shall submit a statement of his assets and liabilities with his application. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Investigation and issuance of license

28-6. Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition as provided in this chapter, the commissioner shall

issue a public passenger vehicle license to the owner of the vehicle for the license period ending on the thirty-first day of December following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year. [Passed. Coun. J. 12-20-51, p. 1596; amend. 4-16-52, p. 2178.]

Fees for

28-7. The annual fee for each public passenger vehicle license of the class herein set forth is as follows:

Livery vehicle	$ 25.00
Sightseeing vehicle	125.00
Taxicab	40.00
Terminal vehicle	25.00

Said fee shall be paid in advance when the license is issued and shall be applied to the cost of issuing such license, including, without being limited to, the investigations, inspections and supervision necessary therefor, and to the cost of regulating all operations of public passenger vehicles as provided in this chapter.

Nothing in this section shall affect the right of the city to impose or collect a vehicle tax and any occupational tax, as authorized by the laws of the state of Illinois, in addition to the license fee herein provided. [Passed. Coun J. 12-20-51, p. 1596; amend. 12-30-52, p. 3005.]

Issuance of [illegible]

28-8. All licenses for public passenger vehicles issued for the year 1951, which have not been revoked or surrendered prior to the time when such licenses for the year 1952 shall have been issued, may be renewed from year to year, subject to the provisions of this chapter. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Personal license—Not assignable

28-9. No public passenger vehicle license shall be subject to voluntary assignment or transfer by operation of law, except in the event of the licensee's induction or recall into the armed forces of the United States for active duty or in the event of the licensee's death. In case of death the assignment shall be made by the legal representatives of his estate. No assignment shall be effective until the assignee shall have filed application for a license and is found to be qualified as provided in sections 28-5 and 28-6. If qualified the license shall be transferred to him by the commissioner, subject to payment of a transfer fee of $50.00, the assumption by the assignee of all liabilities for loss or damage resulting from any occurrence arising out of or caused by the operation or use of the licensed public passenger vehicle before the effective date of the transfer and the approval by the commissioner of the insurance to be furnished by the busman, cabman or coachman as required by section 28-12.

It is unlawful for any busman, cabman or coachman to lease or loan a licensed public passenger vehicle for operation by any person for transportation of passengers for hire within the city. No person other than a chauffeur, who is either the busman, cabman or coachman or one hired by the busman, cabman or coachman to drive such vehicle as his agent or employee, in the manner prescribed by the busman, cabman or cochman, shall operate such vehicle for the transportation of passengers for hire within the city.

There shall be no discrimination by any busman, cabman or coachman against any person employed or seeking employment as a chauffeur with respect to hire, promotion, tenure, terms, conditions and privileges of employment on account of race, color, religion, national origin or ancestry. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3005.]

Emblem

28-10. The commissioner shall deliver with each license a sticker license emblem which shall bear the words "Public Vehicle License" and "Chicago" and the numerals designating the year for which such license is issued, a reproduction of the corporate seal of the city, the names of the mayor and the commissioner and serial number identical with the number of the public vehicle license. The predominant back-ground colors of such sticker license emblems shall be different from the vehicle tax emblem for the same year and shall be changed annually. The busman, cabman or coachman shall affix, or cause to be affixed, said sticker emblem on the inside of the glass part of the windshield of said vehicle. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3005.]

License card

28-11. In addition to the license and sticker emblem the commissioner shall deliver a license card for each vehicle. Said card shall contain the name of the busman, cabman or coachman, the license number of the vehicle and the date of inspection thereof. It shall be signed by the commissioner and shall contain blank spaces upon which entries of the date of every inspection of the vehicle and such other entries as may be required shall be made. It shall be of different color each year. A suitable frame with glass cover shall be provided and affixed on the inside of the vehicle in a conspicuous place and in such manner as may be determined by the commissioner for insertion and removal of the public passenger vehicle license card; and in every livery vehicle and taxicab said frame shall also be provided for insertion and removal of the chauffeur's license card and such other notice as may be required by the provisions of this chapter and the rules of the commissioner. It is unlawful to carry any passenger or his baggage unless the license cards are exposed in the frame as provided in this section. [Passed, Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 2005.]

Insurance

28-12. Every busman, cabman or coachman shall carry public liability and property damage insurance and workmen's compensation insurance for his employees with solvent and responsible insurers approved by the commissioner, authorized to transact such insurance business in the state of Illinois, and qualified to assume the risk for the amounts hereinafter set forth under the laws of Illinois, to secure payment of any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the busman's, cabman's or coachman's public passenger vehicles.

The public liability insurance policy or contract may cover one or more public passenger vehicles, but each vehicle shall be insured for the sum of at least five thousand dollars for property damage and fifty thousand dollars for injuries to or death of any one person and each vehicle having seating capacity for not more than seven adult passengers shall be insured for the sum of at least one hundred thousand dollars for injuries to or death of more than one person in any one accident. Each vehicle having seating capacity for more than seven adult passengers shall be insured for injuries to or death of more than one person in any one accident for at least five thousand dollars more for each such additional passenger capacity. Every insurance policy or contract for such insurance shall provide for the payment and satisfaction of any final judgment rendered against the busman, cabman or coachman and person insured, or any person driving any insured vehicle, and that suit may be brought in any court of competent jurisdiction upon such policy or contract by any person having claims arising from the operation or use of such vehicle. It shall contain a description of each public passenger vehicle insured, manufacturer's name and number, the state license number and the public passenger vehicle license number.

In lieu of an insurance policy or contract a surety bond or bonds with a corporate surety or sureties authorized to do business under the laws of Illinois, may be accepted by the commissioner for all or any part of such insurance; provided that each bond shall be conditioned for the payment and satisfaction of any final judgment in conformity with the provisions of an insurance policy required by this section.

All insurance policies or contracts or surety bonds required by this section, or copies thereof certified by the insurers or sureties, shall be filed with the commissioner and no insurance or bond shall be subject to cancellation except on thirty days' previous notice to the commissioner. If any insurance or bond is cancelled or permitted to lapse for any reason, the commissioner shall suspend the license for the vehicle affected for a period not to exceed thirty days, to permit other insurance or bond to be supplied in compliance with the provisions of this section. If such other insurance or bond is not supplied, within the period of suspension of the license, the mayor shall revoke the license for such vehicle. [Passed, Coun. J. 12-20-51, 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 2005.]

Payment of judgments and awards

28-13. All judgments and awards rendered by any court or commission of competent jurisdiction for loss or damage in the operation or use of any public passenger vehicle shall be paid by the busman, cabman or coachman within ninety days after they shall become final and not stayed by supersedeas. This

obligation is absolute and not contingent upon the collection of any indemnity from insurance. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Suspension of license

28-14. If any public passenger vehicle shall become unsafe for operation or if its body or seating facilities shall be so damaged, deteriorated or unclean as to render said vehicle unfit for public use, the license therefor shall be suspended by the commissioner until the vehicle shall be made safe for operation and its body shall be repaired and painted and its seating facilities shall be reconditioned or replaced as directed by the commissioner. In determining whether any public passenger vehicle is unfit for public use the commissioner shall give consideration to its effect on the health, comfort and convenience of passengers and its public appearance on the streets of the city.

Upon suspension of a license for any cause, under the provisions of this chapter, the license sticker emblem shall be removed by the commissioner from the windshield of the vehicle and an entry of the suspension shall be made on the license card. If the suspension is terminated an entry thereof shall be made on the license card by the commissioner and a duplicate license sticker shall be furnished by the commissioner for a fee of one dollar. The commissioner shall notify the department of police of every suspension and termination of suspension. [Passed. Coun. J. 12-20-51, p. 1596.]

Revocation of license

28-15. If any summons or subpoena issued by a court or commission cannot be served upon the busman, cabman or coachman at his last Chicago address recorded in the office of the commissioner within sixty days after such process is delivered to the person authorized to serve it, and the busman, cabman, or coachman fails to appear in answer to such process for want of service, or if any busman, cabman or coachman shall refuse or fail to pay any judgment or award as provided in section 28-13; or shall lease or loan any of his licensed public passenger vehicles for operation by any person for hire or shall be convicted of a felony or any criminal offense involving moral turpitude, the mayor shall revoke all public vehicle licenses held by him.

If any public passenger vehicle license was obtained by application in which any material fact was omitted or stated falsely, or if any public passenger vehicle is operated in violation of the provisions of this chapter for which revocation of the license is not mandatory, or if any public passenger vehicle is operated in violation of the rules and regulations of the commissioner relating to the administration and enforcement of the provisions of this chapter, the commissioner may recommend to the mayor that the public passenger vehicle license therefor be revoked and the mayor, in his discretion, may revoke said license.

Upon revocation of any license, the commissioner shall remove the license sticker emblem and the license card from the vehicle affected. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3905.]

Interference with commissioner's duties

28-16. Every busman, cabman or coachman shall deliver or submit his public passenger vehicles for inspection or the performance of any other duty by the commissioner upon demand. It is unlawful for any person to interfere with or hinder or prevent the commissioner from discharging any duty in the enforcement of this chapter. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Front seat to chauffeur

28-17. It is unlawful to permit more than one passenger to occupy the front seat with the chauffeur in any public passenger vehicle. [Passed. Coun. J. 12-20-51, p. 1596.]

Notice

28-18. It is the duty of every busman, cabman or coachman to notify the commissioner whenever any change in his Chicago address is made. Any notice required to be given to the busman, cabman or coachman shall be sufficient if addressed to the last Chicago address recorded in the office of the commissioner. [Passed. Coun. J. 12-20-51, p. 1596; amend. 12-30-52, p. 3905.]

Livery vehicles

28-19. No person shall be qualified for a livery vehicle license and a taxicab license at the same time; nor shall any person having a livery vehicle license be associated with anyone for sending or receiving calls for taxicab service.

No license for any livery vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing, the commissioner shall determine that public convenience and necessity require additional livery service and shall recommend to the council the maximum number of such licenses to be authorized by ordinance.

Not more than six passengers shall be accepted for transportation in a livery vehicle on any trip. [Passed. Coun. J. 12-20-51. p. 1598; amend. 1-30-52, p. 1921.]

Taximeter prohibited

§ 28-19.1. It is unlawful for any person to operate or drive a livery vehicle equipped with a meter which registers a charge or fare or indicates the distance traveled by which the charge or fare to be paid by a passenger is measured. [Passed. Coun. J. 1-30-52, p. 1921.]

Solicitation of passengers prohibited

28-19.2. It is unlawful for any person to solicit passengers for transportation in a livery vehicle on any public way. No such vehicle shall be parked on any public way for a time longer than is reasonably necessary to accept passengers in answer to a call for service and no passengers shall be accepted for any trip in such vehicle without previous engagement for such trip, at a fixed charge or fare, through the station or office from which said vehicle is operated. [Passed. Coun. J. 1-30-52, p. 1921.]

Livery advertising

28-20. It is unlawful for the cabman of any livery vehicle, or the station from which it is operated to use the word "taxi", "taxicab" or "cab" in connection with or as part of the name of the cabman or his trade name.

The outside of the body of each livery vehicle shall be uniform black, blue or blue-black color. No light fixtures or lights shall be attached to or exposed so as to be visible outside of any livery vehicle, except such as are required by the law of the state of Illinois regulating traffic by motor vehicles and one rear red light in addition to those required by said law. No name, number or advertisement of any kind, excepting official license emblems or plates, shall be painted or carried so as to be visible outside of any livery vehicle.

It is unlawful for any person to hold himself out to the public by advertisement, or otherwise, to render any livery service unless he is the cabman of a licensed livery vehicle. [Passed. Coun. J. 12-20-51, p. 1598.]

Sightseeing vehicles

28-21. Sightseeing vehicles shall not be used for transportation of passengers for hire except on sightseeing tours or chartered trips. Passengers for sightseeing tours shall not be solicited upon any public way except at bus stands specially designated by the council for sightseeing vehicles.

It is unlawful for any cabman or coachman to advertise his public passenger vehicle for hire on sightseeing tours. [Passed. Coun. J. 12-20-51, p. 1598; amend. 12-30-52, p. 2005.]

Taxicabs

28-22. Every taxicab shall be operated regularly to the extent reasonably necessary to meet the public demand for service. If the service of any taxicab is discontinued for any reason except on account of strike, act of God or cause beyond the control of the cabman, the commissioner may give written notice to the cabman to restore the taxicab to service, and if it is not restored within five days after notice, the commissioner may recommend to the mayor that the taxicab license be revoked and the mayor, in his discretion, may revoke same. [Passed. Coun. J. 12-20-51, p. 1598.]

Public convenience and necessity

28-22.1. Not more than 3761 taxicab licenses shall be issued unless, after a public hearing, the commissioner shall report to the council that public convenience and necessity require additional taxicab service and shall recommend the number of taxicab licenses which may be issued. Notice of such hearing stating the time and place thereof shall be published in the official newspaper of the city at least twenty days prior to the hearing and by mailing a copy thereof to all taxicab licensees. At such hearing any licensee, in person or by attorney, shall have the right to cross-examine witnesses and to introduce evidence pertinent to the subject. At any time and place fixed for such hearing it may be adjourned to another time and place without further notice.

In determining whether public convenience and necessity require additional taxicab service, due consideration shall be given to the following:

1. The public demand for taxicab service;
2. The effect of an increase in the number of taxicabs on the safety of existing vehicular and pedestrian traffic;
3. The effect of increased competition,
   (a) on revenues of taxicab licensees;
   (b) on cost of rendering taxicab service, including provisions for proper reserves and a fair return on investment in property devoted to such service;
   (c) on the wages or compensation, hours and conditions of service of taxicab chauffeurs;
4. The effect of a reduction, if any, in the level of net revenues to taxicab licensees on reasonable rates of fare for taxicab service;
5. Any other facts which the commissioner may deem relevant.

If the commissioner shall report that public convenience and necessity require additional taxicab service, the council, by ordinance, may fix the maximum number of taxicab licenses to be issued, not to exceed the number recommended by the commissioner. [Passed. Coun. J. 1-30-52, p. 1921.]

Identification of taxicab and cabman

28-23. Every taxicab shall have the cabman's name, telephone number and the public passenger vehicle license number plainly painted in plain Gothic letters and figures of three-eighth inch stroke and at least two inches in height in the center of the main panel of the rear doors of said vehicle. In lieu of the cabman's telephone number the name and telephone number of any corporation or association with which the cabman is affiliated may be painted in the same manner, provided such corporation or association shall have assumed equal liability with the cabman for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the cabman's taxicabs and shall carry and furnish to the commissioner public liability and property damage insurance to secure payment of such loss or damage as provided in section 28-12. The public vehicle license number assigned to any taxicab shall be assigned to the same vehicle or to any vehicle substituted therefor upon annual renewal of the license. No other name, number or advertisement of any kind, excepting signs required by this chapter, official license emblems or plates and a trade emblem, in a manner approved by the commissioner, shall be painted or carried so as to be visible on the outside of any taxicab. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921.]

Taximeters

28-24. Every taxicab shall be equipped with a taximeter connected with and operated from the transmission of the taxicab to which it is attached. The taximeter shall be equipped with a flag at least three inches by two inches in size. The flag shall be plainly visible from the street and shall be kept up when the taxicab is for hire and shall be kept down when it is engaged.

Taximeters shall have a dial or dials to register the tariff in accordance with the lawful rates and charges. The dial shall be in plain view of the passenger while riding and between sunset and sunrise the dial shall be lighted to enable the passenger to read it.

It is unlawful to operate a taxicab for hire within the city unless the taximeter attached thereto has been sealed by the commissioner. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, 1921.]

Taximeter inspection

28-25. At the time a taxicab license is issued and semi-annually thereafter the taximeter shall be inspected and tested by the commissioner to determine if it complies with the specifications of this chapter and accurately registers the lawful rates and charges. If it is in proper condition for use, the taximeter shall be sealed and a written certificate of inspection shall be issued by the commissioner to the cabman. Upon complaint by any person that a taximeter is out of working order or does not accurately register the lawful rates and charges, it shall be again inspected and tested and, if found to be in improper working condition or inaccurate, it shall be unlawful to operate the taxicab to which it is attached until it is equipped with a taximeter which has been inspected and tested by the commissioner, found to be in proper condition, sealed and a written certificate of inspection therefor is issued.

Terminal vehicles

28-31. Terminal vehicles shall not be used for transportation of passengers for hire except from railroad terminal stations and steamship docks to destinations in the area bounded on the north by E. and W. Ohio street; on the west by N. and S. Desplaines street; on the south by E. and W. Roosevelt road; and on the east by Lake Michigan. [Passed. Coun. J. 12-20-51, p. 1596; amend. 1-30-52, p. 1921; 12-30-52, p. 3005; 7-26-55, p. 897.]

Public convenience and necessity

28-31.1. No license for any terminal vehicle shall be issued except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing held in the same manner as specified for hearings in section 28-22.1, the commissioner shall report to the council that public convenience and necessity require additional terminal vehicle service and shall recommend the number of such vehicle licenses which may be issued.

In determining whether public convenience and necessity require additional terminal vehicle service due consideration shall be given to the following:

1. **The public demand for such service;**
2. **The effect of an increase in the number of such vehicles on the safety of existing vehicular and pedestrian traffic in the area of their operation;**
3. **The effect of an increase in the number of such vehicles upon the ability of the licensee to continue rendering the required service at reasonable fares and charges to provide revenue sufficient to pay for all costs of such service, including fair and equitable wages and compensation for licensee's employees and a fair return on the investment in property devoted to such service;**
4. **Any other facts which the commissioner may deem relevant.**

If the commissioner shall report that public convenience and necessity require additional terminal vehicle service, the council, by ordinance, may fix the maximum number of terminal vehicle licenses to be issued not to exceed the number recommended by the commissioner. [Passed. Coun. J. 7-26-55, p. 897.]

Local fares

28-31.2. The rate of fare for local transportation of every passenger in terminal vehicles of the licensee shall be uniform, regardless of the distance traveled; provided that children under 12 years of age, when accompanied by an adult, shall be carried at not more than half-fare. Such rates of fare shall be posted in a conspicuous place or places within each vehicle as determined by the commissioner. [Passed. Coun. J. 7-26-55, p. 897.]

Penalty

28-32. Any person violating any provision of this chapter for which a penalty is not otherwise provided shall be fined not less than $5.00 nor more than $100.00 for the first offense, not less than $25.00 nor more than $100.00 for the second offense during the same calendar year, and not less than $50.00 nor more than $100.00 for the third and succeeding offenses during the same calendar year, and each day that such violation shall continue shall be deemed a separate and distinct offense. [Passed. Coun. J. 12-20-51, p. 1596.]

NOTE: The following list covers amendments prior to 12-20-51 to former Chapter 28, revised 11-28-45, p. 6639:

28-4. 2-6-48, p. 1918; 8-1-48, p. 1943.
28-6. 2-28-46, p. 6167; 2-6-47, p. 7219; 2-6-48, p. 1918.
28-18. 2-28-46, p. 6167; 2-6-47, p. 7219; 2-6-48, p. 1918.
28-19. 2-6-48, p. 1918; 8-1-48, p. 1943; 12-29-50, p. 7627.
28-29. 8-29-46, p. 2978.
28-30. 8-21-41, p. 6487; 10-27-43, p. 803; 12-29-44, p. 9696.
28-31. 10-27-43, p. 803.
28-32. 8-21-41, p. 6487.

J. P. Burke, Krska, Sheridan, Murray, Fitzpatrick, Campbell, Rouk, Janousek, Toureh, Lewis, Marzullo, Sain, T. F. Burke, Ronan, Keane, Suiski, Brandt, Sands, Laskowski, Massey, Corcoran, Cullerton, Shapiro, Simon, Bell, Crowe, Bauler, Rosenberg, Weber, Young, Hirsh—41.

Nays—Aldermen Bohling, Hoellen, Sperling—3.

The following is said ordinance as passed:

AMENDMENTS TO CHAPTER 28 OF THE MUNICIPAL CODE RELATING TO PUBLIC PASSENGER VEHICLES.

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Section 28-1 of the Municipal Code of Chicago is amended to read as follows:

28-1 *Definitions.*) "Cabman" means a person engaged in business as proprietor of one or more taxicabs.

"Chauffeur" means the driver of a public passenger vehicle licensed by the city of Chicago as a public chauffeur.

"City" means the city of Chicago.

"Coachman" means a person engaged in business as proprietor of one or more *livery vehicles, sight-seeing vehicles* or terminal vehicles.

"Commissioner" means the public vehicle license commissioner, or any other body or officer having supervision of public passenger vehicle operations in the city.

"Council" means the city council of the city of Chicago.

"Livery vehicle" means a public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance.

"Person" means a natural person, firm, association of corporation in his own capacity and not in a representative capacity, the personal pronoun being applicable to all such persons of any number or gender.

"Public passenger vehicle" means a motor vehicle, as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting in operation of a metropolitan transit authority or public utility under the laws of Illinois.

"Sightseeing vehicle" means a public passenger vehicle for hire principally on sightseeing tours at a charge or fare per passenger for each tour fixed by agreement in advance or for hire otherwise at a charge for each vehicle per trip fixed by agreement in advance.

"Taxicab" means a public passenger vehicle for hire only at lawful rates of fare recorded and indicated by taximeter in operation when the vehicle is in use for transportation of any passenger.

"Taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled waiting time and extra passengers.

"Terminal vehicle" means a public passenger vehicle which is used exclusively by a coachman *under contract with railroad or steamship carriers for the transfer of their passengers and hand baggage on route in interstate travel between railroad terminals and steamship docks pursuant to through route published tariffs.*

SECTION 2. Section 28-6 of said code is amended by striking out the last sentence of said section and substituting therefor the following:

If the commissioner shall find that the applicant, and all other statements and documents required to be filed with said application have been properly executed, and that the applicant is qualified to pursue the occupation of a cabman or coachman, the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued.

SECTION 3. Section 28-7 of said code is amended by striking out the schedule of fees for each public passenger vehicle license and substituting therefor the following:

Livery vehicle ..... $ 40.00
for each vehicle designed or used for carrying not more than seven persons, and $5.00 more for each additional person.

Sightseeing vehicle $100.00

Taxicab ..... $ 60.00

Terminal vehicle ..... $ 40.00
for each vehicle designed or used for carrying not more than seven persons, and $5.00 more for each additional person.

SECTION 4. Sections 28-10, 28-11, 28-12, 28-16 and 28-18 of said code are amended by striking out the word "busman" and the comma following same, wherever same appear in said sections.

SECTION 5. Sections 28-2, 28-3, 28-4.1, 28-5, 28-9, 28-13, 28-15, 28-19, 28-20, 28-21, 28-22.1, 28-23 and 28-28 are amended, and Sections 28-5.1, 28-6.1, 28-12.1, 28-13.1, 28-15.1 and 28-20.1 are added to said code, the amended and added sections to read as follows:

28-2 *License required.*) It is unlawful for any person other than a metropolitan transit authority or public utility to operate a motor vehicle, or for the registered owner thereof to permit it to be operated, for the transportation of passengers for hire within the city, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle.

28-3 *Interurban operations.*) Nothing in this chapter shall be construed to prohibit any public passenger vehicle from coming into the city to discharge passengers accepted for transportation outside the city. While said vehicle is in the city no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire, and a white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed at the windshield of the vehicle. No person shall be solicited or accepted in said vehicle *for transportation from any place within the city.* Any person in control or possession of said vehicle who violates any of the provisions of this section shall be subject to arrest and fine of not less than fifty dollars nor more than two hundred dollars for each offense.

28-4.1 *Specifications.*) No vehicle shall be licensed as a public passenger vehicle unless it has *two doors on each side, and no vehicle having seating capacity for more than eight adult passengers shall be so licensed unless it has at least*

TEXT IS POOR

two doors with fixed aisle space for access to said doors.

28-5 *Application.*) Application for public passenger vehicle licenses shall be made in writing, signed and sworn to by the applicant *or, if applicant is a corporation, by its duly authorized agent*, upon forms provided by the commissioner. The application shall contain the full name, Chicago *business address and residence address of the applicant, the business telephone number of the applicant*, the manufacturer's name, model, length of time in use, horsepower and seating capacity of the vehicle *which* applicant will use, if a license is issued, and the class of public passenger vehicle license requested. *If the applicant is affiliated or to become affiliated or identified with any person by the color scheme of vehicles, trade name or emblem, telephone number, radio dispatch system, or service agreement, the application shall contain the full name, Chicago business address and telephone number of said affiliate, and a copy of the agreement with said affiliate, if any, shall be filed with the application.*

28-5.1 *Qualifications.*) All corporate applicants for public passenger vehicle licenses shall be organized or qualified to do business under the laws of Illinois and have their principal places of business in the city of Chicago, and all other applicants shall be citizens of the United States residing and domiciled in the city of Chicago. No person shall be qualified for license, if affiliated or identified with any person, by agreement or otherwise, as described in section 28-5, unless said affiliate is a corporation organized or qualified to do business under the laws of Illinois and has its principal place of business in Chicago or is a citizen of the United States residing and domiciled in the city of Chicago, registered with the commissioner, and has complied with all the provisions of this ordinance and all orders, rules and regulations adopted or issued by the commissioner governing the business of such affiliates.

28-9 *Personal License – Fair Employment Practice.*) *The relations between the licensee of any public passenger vehicle and the drivers thereof shall be that of employer and employers.* It is unlawful for any cabman or coachman to lease or loan his public passenger vehicle *or to contract for the independent operation thereof by any affiliate for transportation of passengers for hire within the city, or to contract with any affiliate for management of the cabman's or coachman's operations for any consideration other than payment of a stipulated cost of service charge to such affiliate. No person other than a chauffeur who is either the cabman or coachman, or one hired by him or his affiliate for wages, commissions or other compensation for his service as chauffeur, shall drive* such vehicle for the transportation of passengers for hire within the city. There shall be no discrimination *against* any person employed or seeking employment as a chauffeur with respect to hire, promotion, tenure, terms and conditions of employment on account of race, color, religion, national origin or ancestry.

28-9.1 *Limited Assignability.*) No public passenger vehicle license shall be subject to voluntary assignment or transfer by operation of law, except in the event of the licensee's induction or recall into the armed forces of the United States for active duty or in the event of the licensee's death. In case of death the assignment shall be made by the legal representatives of his estate. No assignment shall be effective unless made to a natural person and until such assignee shall have filed application for a license and is found to be qualified as provided in sections 28-5, 28-5.1 and 28-6. If qualified the license shall be transferred to him by the commissioner, subject to payment of a transfer fee of $50.00, and approval by the commissioner of the insurance required by section 28-12 or 28-12.1.

28-12.1 *Registration by Affiliates—Liability—Insurance.*) Every affiliate of any cabman or coachman shall be registered in the office of the commissioner and promptly report the full name, Chicago business address and residence address of each cabman or coachman so affiliated.

Upon registration, the affiliate shall become primarily liable for personal injury, death and property damage resulting from any occurrence arising out of or caused by the operation or use of any public passenger vehicle in any manner identified with the affiliate, without identification of the cabman, coachman or chauffeur responsible.

Said affiliate shall provide public liability and property damage insurance covering the affiliate and all his affiliated cabmen or coachmen, and all their public passenger vehicles, in lieu of such insurance required to be carried by each cabman or coachman pursuant to section 28-12. All such insurance policies or contracts, or surety bonds, or copies thereof certified by the insurers or sureties shall be filed with the commissioner and shall be subject to the provisions of section 28-12 relating to cancellation or lapse.

28-30.1 *Books and Records.)* Every cabman and affiliate shall keep and provide accurate books and records of account of his operations at his place of business in the city. On or before May 1 of each year, every cabman and affiliate shall file with the commissioner a profit and loss statement for the preceding calendar year, showing all his earnings and expenditures for operation, maintenance and repair of property, depreciation expense, premiums paid for workmen's compensation and public liability insurance, and taxes paid for unemployment insurance and social security, and all state and local license fees, property taxes and federal income taxes, and a balance sheet taken at the close of said year.

The commissioner, or the authorized committee of the council, shall have access to the property, books, contracts, accounts and records during normal business hours at said place of business, for such information as may be required for the effective administration and enforcement of the provisions of this chapter, or for the adoption of any ordinances rules or regulations affecting taxicab operations.

28-13. *Payment of judgments and awards.*) All judgments and awards rendered by any court or commission of competent jurisdiction for loss or damage in the operation or use of any public passenger vehicle shall be paid within ninety days after they shall become final and not stayed by supersedeas. This obligation is absolute and not contingent upon the collection of any indemnity from insurance.

28-13.1 *Cancellation of Affiliate's Registration.*) If said affiliate abandons his residence, domicile or principal place of business in the city

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of Chicago, or if any official notice or legal process cannot be served upon him at his last Chicago address registered in the office of the commissioner, and he fails to respond to such notice, or appear in answer to legal process at the time fixed therein, or if he denies liability on the ground that he was not the owner or operator of such vehicle, or if any judgment or award against said affiliate is not paid within the time provided in section 28-13, his registration shall be canceled and the public passenger vehicles of all his affiliated cabmen, or coachmen shall be declared unsafe by the commissioner and their licenses shall be suspended until their affiliation is severed by removal of all equipment and indicia of affiliation and cancellation of all agreements with said affiliate.

28-15 *Mandatory revocation of License.*) If any licensee abandons his residence, domicile or place of business in the city or if any official notice or legal process cannot be served upon him at his last Chicago address registered in the office of the commissioner and he fails to respond to such notice or appear in answer to legal process at the time fixed therein, or if any judgment or award against him is not paid within the time provided in section 28-13, or if any licensee shall be convicted of a felony or any criminal offense involving moral turpitude or if, while in charge of a public passenger vehicle as a chauffeur, he shall have in his possession or under his control any narcotic drugs, or shall solicit any person for transportation to any prostitute or house of ill-fame or disorderly place, or direct or inform any person where any prostitute, house of ill-fame or disorderly place is located, all his licenses shall be revoked.

Upon revocation of any license, the commissioner shall remove the license sticker emblem and the license card from the vehicle affected.

28-15.1 *Discretionary Revocation of License.*) If any public passenger vehicle license was obtained by application in which any material fact was omitted or stated falsely, or if any cabman or coachman, while in charge of a public passenger vehicle as a chauffeur, shall operate any public passenger vehicle in violation of the provisions of this chapter or of the rules and regulations of the commissioner relating to the administration and enforcement of the provisions of this chapter, the commissioner may recommend to the mayor that all public passenger vehicle licenses held by him be revoked and the mayor, in his discretion, may revoke said licenses.

28-19. *Livery Vehicles.*) No person shall be qualified for a livery vehicle license and a taxicab license at the same time; nor shall any coachman become affiliated or identified with any cabman or with an affiliate of any cabman.

No license for any livery vehicle shall be issued, except in the annual renewal of such license or upon transfer to permit replacement of a vehicle for that licensed unless, after a public hearing, the commissioner shall report to the council that public convenience and necessity require additional livery service. The provisions of Section 28-22.1 relating to notice of hearing and the procedure at such hearing and thereafter, shall be applicable as nearly as they may be to proceedings relating to public convenience and necessity for additional livery service.

28-20 *Livery Advertising.*) The outside of the body of livery vehicles shall be solid black or blue-black in color, without any inscription thereon. No lights shall be attached to or exposed outside of such vehicle, unless required or permitted by the law of the State of Illinois regulating traffic.

It is unlawful for any person to hold himself out to the public by advertisement, or otherwise, to render any livery service, unless he is the coachman of a licensed livery vehicle, or for any coachman to use the words "cab," "cabman," "taxi," or "taxicab" in connection with or as part of his operation of such vehicle.

28-21 *Sightseeing Vehicles.*) Sightseeing vehicles shall not be used for transportation of passengers except on sightseeing tours or chartered trips. Passengers for such tours shall not be solicited upon any public way except at bus stands specially designated by the council for sightseeing vehicles, nor shall any person other than a coachman of such vehicle or his authorized agent solicit passengers for such tour.

28-22.1 *Public Convenience and Necessity.*) Not more than 4000 taxicab licenses shall be issued unless after a public hearing, the commissioner shall report to the council that public convenience and necessity require additional taxicab service. Notice of such hearing, stating the time and place thereof, shall be published in the official newspaper of the city at least 20 days prior to the hearing, and by mailing a copy thereof to all licensed cabmen. At such hearing the commissioner may call upon any person qualified to testify and offer evidence pertinent to the subject. Any licensed cabman, in person or by attorney, shall have the right to be heard. At any time and place fixed for such hearing it may be adjourned to another time and place without further notice.

In determining whether public convenience and necessity require additional taxicab service, due consideration shall be given to the following:

(1) The public demand for taxicab service;

(2) The effect of an increase in the number of taxicabs on the safety of existing vehicular and pedestrian traffic;

(3) The effect of increased competition on the revenue of cabmen from the operation of taxicabs and on the wages or compensation, hours and conditions of service of taxicab chauffeurs;

(4) The effect of a reduction, if any, in the level of net revenues from taxicab operations on reasonable rates of fare;

(5) Any other facts which the commissioner may deem relevant.

If the commissioner shall report that public convenience and necessity require additional taxicab service, the council, by ordinance, may change the maximum number of taxicab licenses fixed herein.

28-23 *Identification of Taxicab.*) Every taxicab shall have the public passenger vehicle license number and the cabman's name and telephone number painted in the center of the main panel of the rear doors of said vehicle. If the cabman is affiliated or identified with any person, as described in section 28-5, the affiliate's color scheme, trade name or emblem and telephone number shall be substituted and, without being limited thereto, any of said indicia of affiliation

shall be sufficient to establish the responsibility of the affiliate in the operation of said taxicab. All names and numbers shall be painted in plain Gothic letters and figures of three-eighths inch stroke and at least two inches in height. The public vehicle license number assigned to any taxicab shall be assigned to the same vehicle or to any vehicle substituted therefor by the licensee. No other name, number, emblem or advertisement of any kind excepting signs required by this chapter, official license emblems or plates shall be painted or carried so as to be visible on the outside of any taxicab.

28-28 *Taxicab Service.*) It is unlawful to refuse any person transportation to any place within the city in any taxicab which is unoccupied by a passenger for hire unless it is on its way to pick up a passenger in answer to a call for service or it is out of service for any other reason. When any taxicab is answering a call for service or is otherwise out of service, it shall not be parked at a cabstand, and a white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed at its windshield.

SECTION 6. Sections 28-8, 28-17, 28-31, 28-31.1 and 28-31.2 are repealed.

SECTION 7. This ordinance shall become effective on January 1, 1960.

—

Regulations Relating to Public Chauffeurs.

Alderman Sheridan moved to pass the pending proposed ordinance entitled "Amendments to Chapter 28.1 of the Municipal Code Relating to Public Chauffeurs". The motion prevailed by yeas and nays as follows:

Yeas—Aldermen D'Arco, Metcalfe, Holman, Miller, Condon, Lupo, Pacini, Nowakowski, Zelezinski, Egan, J. P. Burke, Kruka, Sheridan, Murray, Fitzpatrick, Campbell, Bonk, Janousek, Tourek, Lewis, Marzullo, Sain, T. F. Burke, Ronan, Keane, Suiski, Brandt, Sande, Laskowski, Massey, Corcoran, Cullerton, Shapiro, Simon, Bell, Crowe, Bauler, Rosenberg, Weber, Young, Hirsh—41.

Nays—Aldermen Bohling, Hoellen, Sperling—3.

The following is said ordinance as passed:

AMENDMENTS TO CHAPTER 28.1 OF THE MUNICIPAL CODE RELATING TO PUBLIC CHAUFFEURS.

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Section 28.1-10 of the Municipal Code of Chicago is amended by striking out the second paragraph in said section and substituting therefor the following:

If any person has obtained a public chauffeur's license by application in which any material fact was omitted or stated falsely, or if any chauffeur shall become unfit to operate a public passenger vehicle on account of any infirmity of body or mind or because of addiction to the use of drugs or intoxicating liquors, or shall violate any criminal law which, if convicted for such offense, would disqualify any applicant for a chauffeur's license, or shall have in his possession, or under his control, any narcotic drug while in control of a public passenger vehicle, or shall violate any of the provisions of chapter 28 of this code or of this chapter, the commissioner may recommend to the mayor that his license shall be revoked and the mayor, in his discretion, may revoke such license. Upon suspension or revocation of a public chauffeur's license the licensee shall surrender his license certificate to the commissioner.

SECTION 2. Section 28.1-12 of said Code is amended by striking out the last paragraph in said section and substituting therefor the following:

No chauffeur shall solicit patronage for any restaurant, night club, cabaret, dance hall, hotel, public resort, place of amusement, or solicit any person for transportation to any prostitute or house of ill-fame or disorderly place or direct or inform any person where such prostitute, house of ill-fame or disorderly place is located or transport any passenger to any place other than the destination to which the passenger has requested transportation.

SECTION 3. This ordinance shall be effective upon its passage and due publication.

—

Office of Public Vehicle License Commissioner.

Alderman Sheridan moved to pass the pending proposed ordinance entitled "Amendments to Chapter 21 of the Municipal Code Relating to the Office of the Public Vehicle License Commissioner". The motion prevailed by yeas and nays as follows:

Yeas—Aldermen D'Arco, Metcalfe, Holman, Miller, Condon, Lupo, Pacini, Nowakowski, Zelezinski, Egan, J. P. Burke, Kruka, Sheridan, Murray, Fitzpatrick, Campbell, Bonk, Janousek, Tourek, Lewis, Marzullo, Sain, T. F. Burke, Ronan, Keane, Suiski, Brandt, Sande, Laskowski, Massey, Corcoran, Cullerton, Shapiro, Simon, Bell, Crowe, Bauler, Rosenberg, Weber, Young, Hirsh—41.

Nays—Aldermen Bohling, Hoellen, Sperling—3.

The following is said ordinance as passed:

AMENDMENTS TO CHAPTER 21 OF THE MUNICIPAL CODE RELATING TO THE OFFICE OF THE PUBLIC VEHICLE LICENSE COMMISSIONER.

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Section 21-1 of the Municipal Code of Chicago is amended by striking out the first sentence of said section and substituting therefor the following:

There is hereby created the office of public vehicle license commissioner who shall be in control of the administration and enforcement of the provisions of this code and all ordinances relating to public passenger vehicles.

SECTION 2. Section 21-3 of said code is amended by striking out the first sentence of said section and substituting therefor the following:

The public vehicle license commissioner shall keep a register containing the names and Chicago addresses of all cabmen, coachmen and their affiliates, a description of their public passenger vehicles with their license numbers and a complete record of all inspections of such vehicles and their equipment.

[fol. 129]

EXHIBIT A—AFFIDAVIT

IN THE UNITED STATES DISTRICT COURT

60-C-1509

AFFIDAVIT.

Alex Baxter being first duly sworn on oath deposes and says:

1. That he is the Vice President of Railroad Transfer Service, Inc., and as such is completely familiar with the company's operations and with the facts concerning the safety of its operations and the purchase of licenses from the City of Chicago.

2. That to his knowledge no effort was made by the Public Vehicle License Commissioner to enforce the so-called safety provisions of the ordinance involved in the instant litigation nor any attempt made to collect fees, against Railroad Transfer Service, Inc. until 1960.

3. That after an exchange of correspondence, on Friday, August 26, 1960, he went with an attorney for Railroad Transfer Service, Inc. to the Office of the Public Vehicle License Commissioner.

4. That he sought to pay the fees and obtain licenses for twenty (20) vehicles, but to do so under protest, in order to protect Railroad Transfer Service, Inc.'s right to seek redress in the Courts.

5. That Assistant Corporation Counsel Hanrahan told the Commission that the Corporation Counsel would not accept the application with such a protest; that unless the protest was withdrawn the vehicles operated by Railroad Transfer Service, Inc. would not be licensed and would be ordered off the streets.

6. That since thousands of railroad passengers depend [fol. 130] upon the service of Railroad Transfer Service, Inc. to transport them and their baggage between various railroad terminals, he could not risk the possibility of even a temporary disruption in service, and therefore authorized the payment of the fees for 1960.

7. That except for such payment, no other requirements have been made by the Public Vehicle License Commissioner from that time until September 15, 1961, when he demanded payment of the 1961 fees, as is shown by Exhibit B attached hereto wherein Railroad Transfer Service, Inc. was informed that unless it complied with the provisions of said ordinance, it would be ordered to cease and desist the operation of its vehicles. That said 1961 fees have now been deposited with the Court pending determination of this litigation.

8. That Railroad Transfer Service, Inc. has provided service between railroad terminals pursuant to a contract with the railroads since October 1, 1955, and that to the best of his knowledge the railroads are satisfied with the service performed by Railroad Transfer Service, Inc. and have so informed Railroad Transfer Service, Inc., and that therefore Railroad Transfer Service, Inc. expects to continue to perform this service pursuant to contracts with the railroad for an indefinite period of time.

9. That to his knowledge the Public Vehicle License Commissioner has never promulgated the rules and regulations concerning safety to be followed by Railroad Transfer Service, Inc., and that therefore the question of whether the vehicles are or are not safe is a matter completely subject to his judgment at the time of the inspection.

10. That at the present time Railroad Transfer Service, Inc. files hours of service and safety reports with the Safety Section of the Interstate Commerce Commission [fol. 131] and is also obligated by contract with the railroads, pursuant to their obligations under the Interstate

Commerce Act to provide such other safety reports as may be required from time to time by the railroads.

11. That to the best of his knowledge all of the vehicles operated by Railroad Transfer Service, Inc. are in complete compliance with the contract between the railroads and Railroad Transfer Service, Inc. entered into pursuant to the Interstate Commerce Act and in complete compliance with all applicable safety regulations of the Interstate Commerce Commission.

Further deponent sayeth not.

Alex Baxter.

Subscribed and sworn to before me this 19th day of October, 1961.

Amy G. Rennacker,
Notary Public.
County of Cook, State of Illinois.

(Seal)

[fol. 132]

EXHIBIT B TO AFFIDAVIT OF ALEX BAXTER

City of Chicago

Public Vehicle License Commission

September 15, 1961

Mr. J. L. Keeshin, President
Railroad Transfer Service
First National Bank Building
38 South Dearborn Street
Chicago, Illinois.

Dear Sir:

Please be advised that your company has not made application for the proper licenses for terminal vehicles operated by your company.

Please be further advised that unless your company complies with the provisions of the ordinance by Friday, September 22, 1961, you are hereby ordered by this office to cease and desist the operation of your vehicles until the ordinance of the City of Chicago has been fully complied with by your company.

Very truly yours,

James Y. Carter,
Commissioner.

JYC:mb

[fol. 133] RRR—Special Delivery (Stamps)

(Envelope)

City of Chicago
Public Vehicle License Commission
Sixth Floor
1104 South Wabash Avenue
Chicago 5, Illinois

"I Will—Keep Chicago Clean"

Special Delivery

Registered Letter

Return Receipt Requested
548516

Mr. J. L. Keeshin, President
Railroad Transfer Service
First National Bank Building
38 South Dearborn Street
Chicago, Illinois.

[fol. 134] *Affidavit of Alex Baxter*

Order.

At a Session of the Interstate Commerce Commission, Finance Board No. 1, held at its office in Washington, D. C., on the 17th day of February, A. D. 1961.

No. MC-F-7717

John L. Keeshin—Control; Fidelity Industries, Inc.—Control; Railroad Transfer Service, Inc.—Control; Illinois Railroad Transfer Service, Inc.—Purchase—Flash Charter Coach Co.

It appearing, That by joint application filed November 18, 1960, as supplemented, Illinois Railroad Transfer Service, Inc., of Chicago, Ill., and Flash Charter Coach Co., of Long Grove, Ill., seek authority under section 5 of the Interstate Commerce Act, for the purchase by the former of the operating rights and certain property of the latter for $17,500, and that, in the same application, Railroad Transfer Service, Inc., also of Chicago, which controls Illinois Railroad Transfer Service, Inc., through ownership of capital stock, and, in turn, Fidelity Industries, Inc., a non carrier, and John L. Keeshin, an individual, both of Chicago, who control Railroad Transfer Service, Inc., through stock ownership, and Keeshin Transport System, of Chicago, seek authority under the same section to acquire concurrent control of the operating rights and property through the purchase;

It further appearing, That the operating rights proposed to be purchased are those described in certificate No. MC-118044, issued August 17, 1959, authorizing operations in interstate or foreign commerce, as a motor common carrier, over irregular routes, of passengers and their baggage, restricted to traffic originating in the territory indicated, in charter operations, from points in Cook [fol. 135] and Will Counties, Ill., and in Lake County, Ind., to points in the District of Columbia, Arkansas, Connecti-

cut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin, and return;

It further appearing, That Keeshin Transport System, Inc., an affiliate of the vendee, does not possess the power to exercise direct or indirect control of the latter, and, therefore, is not a proper party applicant, and as to it the application should be dismissed;

It further appearing, That applicants have failed to submit evidence showing why Railroad Transfer Service, Inc., and Fidelity Industries, Inc., should not be subjected to certain provisions of Part II of the Interstate Commerce Act pursuant to provisions of section 5(3) of the said act;

It further appearing, That vendee is able, financially and otherwise, to purchase the aforementioned operating rights and property and to conduct operations thereunder in interstate or foreign commerce; that the terms and conditions of the transaction as set forth in the application, and the agreement of record, would be just and reasonable; that the fixed charges incurred would not be contrary to the public interest; that no employees would be adversely affected as a result of the transaction; and that the transaction within the scope of section 5(2)(a), and be consistent with the public interest;

It is ordered, That the application, to the extent authority is sought by Keeshin Transport System, Inc., to acquire control of the operating rights and property through the transaction, be, and it is hereby, dismissed;

It is further ordered, That the purchase by Illinois Railroad Transfer Service, Inc., of the operating rights and [fol. 136] property of Flash Charter Coach Co., and the acquisition by Railroad Transfer Service, Inc., and, in

turn, by Fidelity Industries, Inc., and John L. Keeshin, of control of the operating rights and property through the purchase, upon the said terms and conditions be, and they are hereby approved and authorized; and that if the transaction is consummated, vendee will be entitled to operate under said operating rights granted in No. MC-118044 and to be embraced in a certificate issued in its name;

It is further ordered, That upon consummation of the transaction herein authorized, Railroad Transfer Service, Inc., and Fidelity Industries, Inc., shall be considered as motor carriers subject to the provisions of sections 204(a) (1) and (2) 214, and 220 of part II of the Interstate Commerce Act;

It is further ordered, That, if the parties to the transaction herein authorized desire to consummate same, they shall (1) promptly take such steps as will insure compliance with sections 215, 217, and 221(c) of the Interstate Commerce Act, and with rules, regulations, and requirements prescribed thereunder, and (2) confirm in writing to the Commission, immediately after consummation, the date on which consummation has actually taken place;

It is further ordered, That, if the authority herein granted is exercised, Illinois Railroad Transfer Service, Inc., shall submit for consideration and approval, a sworn statement, and one copy thereof, showing all expenditures made, by dates, or to be made in connection with the transaction authorized, including the consideration, legal and other fees, commissions, witness fees, and any other cost incidental to the transaction, the assets acquired, and the liabilities assumed, indicating the account number and title to which each item has been or is to be debited or credited;

It is further ordered, That, the authority herein granted shall be effective on the date hereof;

[fol. 137] It is further ordered, That, unless the authority herein granted is exercised within 180 days of the date hereof, this order shall be of no further force and effect;

And it is further ordered, That recital in said report of balance sheet and other financial data shall not be construed as approving accounting methods which have been followed, or expenditures represented thereby.

By the Commission, Finance Board No. 1.

Harold D. McCoy,
Secretary.

(Seal)

[fol. 138]

IN THE UNITED STATES DISTRICT COURT

Chicago 4

MEMORANDUM OPINION—September 9, 1963

Messrs. David Axelrod and Arnold L. Burke, Axelrod, Goodman & Steiner, 39 South LaSalle Street, Chicago 3, Illinois.

Mr. John C. Melaniphy, Corporation Counsel, City of Chicago, and Mr. John O. Tuohy, Assistant Corporation Counsel, City Hall, Room No. 511, Chicago, Illinois.

Mr. Leonard R. Hartenfeld, Special Assistant Corporation Counsel, 33 South Clark St., No. 943, Chicago 3, Illinois.

No. 60 C 1509

Re: Railroad Transfer Service, Inc.

vs.

The City of Chicago, etc., et al.

Gentlemen:

After reading your respective briefs and giving full consideration to your oral arguments, it is my conclusion that

defendants' motion to dismiss the complaint should be granted.

I can find no facts stated in the complaint or in the exhibits and affidavits attached to the briefs which would warrant relief by way of declaratory judgment or injunction. If I am to rely on the allegations of the complaint itself to [fol. 139] find the principal source of the plaintiff's claimed grievance, it is that plaintiff is required to pay an annual "license or tax" to the City of Chicago for the privilege of operating its terminal vehicles, whereas public utilities and other companies carrying on a similar business are not subject to the same requirement.

There can be no question that the City of Chicago, under its police power, is entitled to charge the plaintiff a license fee to cover the registration and licensing of its terminal vehicles. The Seventh Circuit Court of Appeals in *Atchison, Topeka & Santa Fe Ry. Co.* v. *City of Chicago,* 240 F. 2d 930 (1957), recognized this when it said at page 940:

> "Undoubtedly the city has power to require that one engaged exclusively in interstate commerce may be required to procure from the city a license granting permission to use its highways and in addition pay a license fee demanded of all persons using automobiles on its highways as a tax for the maintenance of the highways and the administration of the laws governing the same. . . . Common carriers for hire, who make the highways their place of business, may properly be charged a tax for such use. *Clark* v. *Poor,* 274 U. S. 554, 557, 47 S. Ct. 702, 71 L. Ed. 1199."

The Supreme Court in *Chicago* v. *Atchison, T. & S. F. R. Co.,* 357 U. S. 77, recognized this when it said at page 88:

> "Of course the City retains considerable authority to regulate how transfer vehicles shall be operated. It could hardly be denied, for example, that such vehicles must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require

registration of these vehicles and exact reasonable fees for their use of the local streets. *Cf. Fry Roofing Co.* v. *Wood,* 344 U. S. 157; *Capitol Greyhound Lines* v. *Brice,* 339 U. S. 542."

Plaintiff also recognized this when, prior to the adoption of the ordinance, it suggested to the defendant that the [fol. 140] proposed license fee in the ordinance be amended to provide for a $40. license fee for a vehicle with a twelve passenger capacity and $5. additional for each passenger capacity over twelve, and that "this would be acceptable to my client."

At the time this suit was filed, plaintiff had already complied with the provisions of the ordinance by filling out the necessary application and by paying the required license fee for 1960. Since the suit was filed, plaintiff has deposited the 1961 and 1962 license fees with the Clerk of this Court. During all of this period plaintiff has been permitted to carry on its terminal operation without interruption on the part of the defendants. If plaintiff can solve its entire problem simply by the paying of its annual license fees then it is not entitled to relief here. If the license fee is the matter in controversy, then the amount involved in this case is less than the $10,000. required under the provisions of 28 U. S. C. 1331.

I regard the ruling in *Healy* v. *Ratta,* 292 U. S. 263 (1934), as squarely in point and clearly controlling here. The following quotations taken from the opinion in that case also apply here:

"The tax, payment of which is demanded or resisted, is the matter in controversy, since payment of it would avoid the penalty and end the dispute. . . . Only when the suit is brought to restrain imposition of a penalty *already accrued* by reason of failure to comply with the statute or order assailed can the penalty be included as any part of the matter in controversy." (*Id.* at page 268.) (Emphasis supplied.)

"Where a challenged statute commands the suppression or restriction of a business *without reference to the payment of any tax,* the right to do the business, or the injury to it, is the matter in controversy. . . . But the possible suppression of the business here, through the prosecution of those who conduct it, is but the threatened consequence or penalty for non-payment [fol. 141] of the challenged tax. . . . The disputed tax is the matter in controversy, and its value, not that of the penalty or loss which payment of the tax would avoid, determines the jurisdiction." (*Id.* at page 269.) (Emphasis supplied.)

"The bill of complaint does not allege, nor can it be assumed, that the appellant will act to compel compliance with the statute by appellee in future years *for which no tax is yet payable,* or that the appellee will seek to continue his business in Manchester indefinitely in the future, or that the taxing act will be continued on the statute books, unmodified either as to the amount of the tax or the features to which the appellee objects. These, or like considerations, have led to the conclusion that, in suits to enjoin the collection of a tax payable annually or the imposition of penalties in case it is not paid, the sum due or demanded is the matter in controversy and the amount of the tax, not its capitalized value, is the measure of the jurisdictional amount." (*Id.* at pages 270-271.) (Emphasis supplied.)

Moreover, even if plaintiff could get past this jurisdictional barrier, I can find no merit to its complaint that the ordinance is discriminatory in requiring it to pay a license fee and excluding public utilities and metropolitan transit authorities from making similar payments. As pointed out by the defendants, the City of Chicago would be without authority to regulate public utilities.

I can find nothing unreasonable on the face of the ordinance in the classification that has been made which would lead me to say that the legislative decision is without any

rational basis. The mere fact that plaintiff happens to be the only company operating terminal vehicles between railroads does not render the classification invalid because it singles out the plaintiff. If another competing company carrying on the same type of business came into the picture, the ordinance would clearly apply to it as well as to the plaintiff. I can therefore find no basis for relief under the [fol. 142] admitted facts in this case insofar as the licensing and tax aspects of this ordinance are concerned.

I have equal difficulty in locating any basis for relief in the other contentions raised by plaintiff in its briefs relating to the so-called regulatory aspects of the ordinance. As I interpret plaintiff's oral and written arguments, its primary objection is directed to Section 15-1 of the ordinance giving the Commissioner discretionary power to recommend to the Mayor the revocation of licenses. Plaintiff apparently considers this provision as a sword of Damocles, which will continue to hang over its head even after it pays its license fees. Admittedly, the Commissioner has done little to date to warrant this apprehension. In 1960 he issued the necessary licenses to the plaintiff. Since the complaint was filed, no action has been taken by him, except the admonitory letter of September 16, 1961. Defendant now concedes that the threat made in this letter was an idle threat, and that under the ruling in the *Atchison* case, the City would have no right to issue a "cease and desist" order.

Apparently, the only regulation outside of the ordinance which the Commissioner has promulgated is one requiring plaintiff's employees to be fingerprinted and examined by doctors and to pay a fee of $5. each. I can see nothing unreasonable about this regulation, and plaintiff has already complied with it.

Under these admitted facts, it is my opinion that the plaintiff is not entitled to judicial intervention. There is no justiciable controversy, and the complaint is therefore premature. I reached this conclusion after carefully reading the case of *Continental Baking Co.* v. *Woodring*, 286

U. S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, which was cited by Judge Schnackenberg in *Atchison* at page 938. The Court in the *Woodring* case considered provisions of an ordinance which were at least as onerous as those set forth in the [fol. 143] Chicago ordinance involved here, including the regulation that the vehicles there involved should be maintained in "a safe and sanitary condition." After first giving its approval to the requirements made by the ordinance, the Court in the *Woodring* case went on to say (at page 369):

> "In this respect, as well as in relation to the other matters above-mentioned, appellants had no right to resort to equity merely because of an anticipation of improper or invalid action in administration. *Smith* v. *Cahoon* [283 U. S. 553, 563]; *Dalton Adding Machine Co.* v. *State Corporation Comm.*, 236 U. S. 699, 700, 701."

And so it seems to me in this case, that in raising the specter of possible arbitrary action on the part of the Commissioner, the plaintiff is complaining about having its interstate foot stepped on before the Commissioner has taken any important action beyond collecting the license fee to which the City is entitled.

The observation made in *Lehon* v. *City of Atlanta*, 242 U. S. 53, 37 S. Ct. 70, 72, 61 L. ed. 145, applies here:

> "To complain of a ruling one must be made the victim of it. One cannot invoke to defeat a law an apprehension of what might be done under it and, which if done, might not receive judicial approval." (*Id.* at page 56.)

If I undertook to fashion some kind of a declaratory judgment order and injunction decree for the purpose of preventing possible future harassment of the plaintiff, I would be presented with the same type of problem the Court considered in *Public Service Commission* v. *Wycoff Co.*, 344 U. S. 237 (1952). In denying a similar request

for relief, the Court in that case made these observations, which I think are equally applicable to the facts before me:

> "A multitude of rights and immunities may be predicated upon the premise that a business consists [fol. 144] of interstate commerce. What are the specific ones in controversy? The record is silent and counsel little more articulate. We may surmise that the purpose to be served by a declaratory judgment is ultimately the same as respondent's explanation of the purposes of the injunction it originally asked, which is '*to guard against the possibility* that said Commission would attempt to prevent respondent from operating under its certificate from the Interstate Commerce Commission.' . . .
>
> " . . . We may conjecture that respondent fears some form of administrative or judicial action to prohibit its service on routes wholly within the State without the Commission's leave. What respondent asks is that it win any such case before it is commenced." (*Id.* at pages 244-245.)
>
> " . . . [W]hen the request is not for ultimate determination of rights but for preliminary findings and conclusions intended to fortify the litigant against future regulation, it would be a rare case in which the relief should be granted." (*Id.* at page 246.)

Although Sections 28-15 and 28-15.1 of the ordinance give the Commissioner authority to recommend the revocation of licenses under certain conditions, the Commissioner will at all times in the future remain subject to the rule that such authority cannot be arbitrarily exercised. Plaintiff will always have protection against capricious action. This is clearly pointed out by the Supreme Court in the *Woodring* case, where the Court said at page 368:

> "Whatever uncertainty may exist with respect to possible regulations of the commission will be resolved as regulations are promulgated. If any of these tran-

scend constitutional limits, appellants will have their appropriate remedy."

Since 1958 plaintiff has operated its terminal vehicles under the protective arm of the mandate of the Supreme Court in *Atchison*. Defendants have not attempted to inter- [fol. 145] fere with this operation in any substantial way, except to insist upon the plaintiff's compliance with the licensing provisions of the ordinance.

Defendants in oral argument expressly disavowed any plan or scheme on their part to harass and annoy plaintiff by arresting or interfering with its drivers. On the basis of defendants' representations, I would assume that this litigation can be finally terminated by plaintiff's compliance with the licensing and other related provisions of this ordinance.

I will withhold the entry of any final order for a period of thirty days to give the plaintiff an opportunity within that time to settle its obligation to the defendants for license fees for 1961 and 1962 and to apply for and procure licenses for the year 1963, if application for the same can be made at this time.

I have accordingly entered the following minute order on this date: Cause continued for decision on defendants' motion to dismiss the complaint until October 11, 1963.

Very truly yours,

Bernard M. Decker.

IN THE UNITED STATES DISTRICT COURT

60-C-1509

ORDER.—October 11, 1963

This matter coming on to be heard on motion of the plaintiff for an order permitting it to deposit the sum of Sixteen Hundred Thirty ($1,630.00) Dollars with the Court to be held pending the outcome of this litigation which concerns a certain Ordinance of the City of Chicago. (Section

28-1 et seq. Municipal Court of Chicago) all parties being [fol. 146] represented in Court, and the Court having jurisdiction and being fully advised in the premises,

It Is Ordered that the plaintiff deposit with the Clerk of the Court the sum of Sixteen Hundred Thirty ($1,630.00) Dollars which plaintiff states is the amount which constitutes full license fees which would be due under the Ordinance for the year 1963 to be held by the Clerk of the Court pending the outcome of this litigation.

It Is Further Ordered that the Public Vehicle License Commission, shall be permitted to inspect plaintiff's vehicles pursuant to said ordinance until further order of the Court.

It Is Further Ordered that in the event the plaintiff be successful and the ordinance in question be declared unconstitutional and unenforceable, said money shall be returned to the plaintiff.

It Is Further Ordered that in the event that the defendants shall be successful and said ordinance be held constitutional and enforceable, said money shall be paid to the City as the plaintiff's license fees under said ordinance for the year 1963.

It Is Further Ordered that nothing contained in this Order shall be taken to apply to 1964 unless the parties hereto shall further agree or unless the Court shall enter a further order concerning 1964.

Enter:

Bernard M. Decker, Judge.

Dated at Chicago, Illinois Oct. 11, 1963.

[fol. 147]

IN THE UNITED STATES DISTRICT COURT

Chicago 60604.

Chambers of Judge Bernard M. Decker.

MEMORANDUM OPINION—May 6, 1965

Messrs. David Axelrod and Arnold L. Burke, Axelrod, Goodman & Steiner, 39 South LaSalle Street, Chicago, Illinois 60603;

Messrs. Norman H. Nachman and Allan G. Sweig, 38 S. Dearborn Street, Chicago, Illinois 60603;

Mr. Raymond F. Simon, Corporation Counsel, City of Chicago, and Mr. John O. Tuohy, Assistant Corporation Counsel, City Hall, Room #511, Chicago, Illinois;

Mr. Leonard R. Hartenfeld, Special Assistant Corporation Counsel, 33 S. Clark St., #943, Chicago, Illinois 60603.

Re: Railroad Transfer Service, Inc. vs. The City of Chicago, etc., et al.—No. 60 C 1509.

Gentlemen:

On September 9, 1963, an order was entered dismissing the complaint in this case; the order was accompanied by an opinion discussing the facts and the law upon which the decision rested.

[fol. 148] The basic holding was that there were no facts in the complaint or in the exhibits and affidavits attached to the briefs which warranted relief by declaratory judgment or injunction; an additional factor was the failure of the complaint to allege facts which showed that the $10,000 jurisdictional amount required by 28 U. S. C. § 1331 was involved. The opinion stated that no claim could be based upon the license fee charged by the City because the fee the defendant charged was within the City's police power as indicated in *Atchison, Topeka & Santa Fe Ry. Co.*

v. *City of Chicago*, 240 F. 2d 930 (7th Cir. 1957); and *Chicago* v. *Atchison, T. & S. Co.*, 357 U. S. 77 (1958).

Regarding allegations that the City was interfering with the powers over interstate commerce that the Constitution has vested in the United States government, the complaint did not allege that the City or its officials had interfered with the plaintiff's operations in ways other than those which were permissible and which did not interfere with interstate commerce; thus, it was held that, as to those allegations, the complaint has to be dismissed for failure to present the court with an actual controversy as required by 28 U. S. C. §§ 2201 and 2202.

Following the dismissal of its complaint, the plaintiff filed an appeal. It appears from the opinion of the Court of Appeals, *Railroad Transfer Service, Inc.* v. *City of Chicago*, 334 F. 2d 991 (7th Cir. 1964), that the parties discovered two changes had been made in the ordinance which had not been brought to the trial court's attention. Section 28-15.1 of the ordinance had been amended so that the Commissioner was required to hold a hearing before recommending to the Mayor that a license be revoked. Additionally, "terminal vehicles" had been removed from [fol. 149] the section of the Ordinance that stated what vehicles were subject to its provisions. Because of these factors, the Court said the following:

> "In order that complete justice may be done in this case under these unusual circumstances, it is the order of this court that the judgment of the district court be vacated and this cause remanded to that court for further proceedings consistent with the facts now appearing in the record before us." 334 F. 2d 991, 993.

Regarding the two points for which the case was remanded, I find the following:

(1) Amending the section that gives the Commissioner the power to recommend revocation of a license by includ-

ing a requirement for hearing does not change the facts that were previously before me.

In my prior opinion, I stated:

> "Although Sections 28-15 and 28-15.1 of the ordinance give the Commissioner authority to recommend the revocation of licenses under certain conditions, the Commissioner will at all times in the future remain subject to the rule that such authority cannot be arbitrarily exercised. Plaintiff will always have protection against capricious action."

The amendment strengthens defendant's position, it does not weaken it; therefore, this new fact does not change my prior conclusion.

(2) The omission of "terminal vehicles" from the definitional section of the ordinance appears to be inadvertent. The defendant makes a strong argument that, regardless of their inclusion within the definitional section, terminal vehicles were referred to in other parts of the ordinance, and, thus, the ordinance continued to apply to terminal vehicles. Nevertheless, on June 10, 1964, the City Council restored the definition of terminal vehicles [fol. 150] to Section 28-1 of the Chicago Municipal Code. Thus, the ordinance stands now as it did when I first considered the case.

After the case returned to this Court, the plaintiff filed a second amended complaint with leave of court; the defendant has filed a motion to dismiss the second amended complaint. In essence, the amendment invokes 28 U. S. C. § 1337 as a basis for jurisdiction; thus, the plaintiff now argues that it is relieved from meeting the $10,000 jurisdictional limit provided in 28 U. S. C. § 1331.

In so far as my original opinion depended upon the plaintiff's failure to meet the $10,000 requirement of 28 U. S. C. § 1331, the amendment would seem to cure that defect; nevertheless, the amendments to the complaint

have not changed the complaint so that the other reasons for which the first complaint was dismissed, sufficient in themselves, cease to apply. These reasons are the following:

(1) The city can validly tax and inspect the plaintiff's vehicles.

(2) Thus far, there is no indication that the city has taken or will take any action in the exercise of its police powers that would either interfere with interstate commerce or would violate the plaintiff's right to due process of the law; therefore, the plaintiff has not presented the court with an actual controversy. Plaintiff's attorneys state that the ordinance is a specter over the plaintiff's head; until the city rattles its chains of interference with interstate commerce, the plaintiff cannot complain.

For the reasons given in my opinion dated September 9, 1963, as modified by this opinion, the defendant's motion to dismiss the second amended complaint must be granted and the second amended complaint must be dismissed.

[fol. 151] It is hereby ordered that the defendant's motion to dismiss the second amended complaint be, and hereby is, granted and that the plaintiff's second amended complaint be, and hereby is, dismissed.

Very truly yours,

Bernard M. Decker,
United States District Judge.

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Name of Presiding Judge, Honorable Bernard M. Decker.

Cause No. 60 C 1509.

Title of Cause

Railroad Transfer Service Inc. *vs.* City of Chicago, etc.

Reserve space below for notations by minute clerk.

Memorandum filed.

ORDER—May 6, 1965

Order Deft's Motion to dismiss second amended complaint is granted, and Pl'tffs second amended complaint be, and hereby is dismissed.

Decker, J.

May 7, 1965.

[fol. 152]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Docket No. 60-C-1509

In Chancery

[Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT—Filed June 1, 1965

To: Raymond F. Simon, Corporation Counsel, City of Chicago, and John O. Tuohy, Assistant Corporation Counsel, City Hall, Chicago, Illinois.

Notice is hereby given pursuant to Rule 73 of the Rules of Civil Procedure for United States District Courts that Railroad Transfer Service, Inc., plaintiff, hereby appeals to the United States Court of Appeals for the Seventh [fol. 153] Circuit from the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, entered May 6, 1965, in which defendants' motion to strike plaintiff's second amended complaint and dismiss plaintiff's claim was granted, and defendants' position that a certain ordinance of the City of Chicago (Chapter 28 of the Municipal Code of Chicago) does not constitute an undue burden upon and obstruction to interstate commerce in violation of the Constitution of the United States and the Interstate Commerce Act was upheld.

Railroad Transfer Service, Inc., Plaintiff, By David Axelrod, Arnold L. Burke, Its Attorneys.

Axelrod, Goodman & Steiner, 39 South LaSalle Street, Chicago, Illinois 60603, Central 6-9375.

[fol. 154] Proof of Service (omitted in printing).

[fol. 155] Certificate of Mailing (omitted in printing).

[fol. 156]

IN THE UNITED STATES DISTRICT COURT

60-C-1509

NOTICE PURSUANT TO RULE 12(d) OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To: Axelrod, Goodman & Steiner, 39 S. La Salle Street, Chicago, Illinois 60603, Attorneys for Plaintiff-Appellant.

Notice is hereby given that Raymond F. Simon, Corporation Counsel of the City of Chicago, and Sydney R. Drebin,

Head of Appeals and Review Division, represent all of the above named defendants-appellees.

Raymond F. Simon, Corporation Counsel of the City of Chicago, 511 City Hall, Chicago, Illinois 60602, Attorney for Defendants-Appellees.

Received a copy of the above and foregoing Notice this 3rd day of June, A. D. 1965.

Axelrod, Goodman & Steiner, By: Axelrod, Goodman & Steiner, Attorneys for Plaintiff-Appellant.

[fol. 157]

IN THE UNITED STATES DISTRICT COURT

60-C-1509

STIPULATION PURSUANT TO RULE 12(e) U. S. C. A., 7TH CIRCUIT

It is hereby stipulated by the parties to the above entitled cause, through their respective attorneys whose signatures are affixed hereto, that the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, prepare the entire record of the above entitled cause for the record on appeal to the United States Court of Appeals for the Seventh Circuit.

Railroad Transfer Service, Inc., Plaintiff-Appellant, By David Axelrod, Arnold L. Burke, Its Attorneys.

Axelrod, Goodman & Steiner, 39 South LaSalle Street, Chicago, Illinois 60603, CEntral 6-9375.

The City of Chicago, et al., Defendants-Appellees, By Raymond F. Simon, Their Attorney.

Raymond F. Simon, Corporation Counsel, City of Chicago, 511 City Hall, Chicago, Illinois 60602.

[fol. 158]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

September Term, 1965—January Session, 1966

No. 15230

RAILROAD TRANSFER SERVICE, INC., a Delaware Corporation, Plaintiff-Appellant,

—v.—

THE CITY OF CHICAGO, *et al.*, Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Before HASTINGS, *Chief Judge,* and CASTLE and SWYGERT, *Circuit Judges.*

OPINION—March 10, 1966

HASTINGS, *Chief Judge.* Railroad Transfer Service, Inc., has appealed from an order of the district court dismissing its second amended complaint for declaratory and injunctive relief against the City of Chicago, Illinois (and certain of its designated officials) on the ground that Transfer had not presented the court with an actual controversy.

Transfer operates a transportation service for 21 railroads having terminals in Chicago, transporting passengers and baggage from one terminal to another when a change of terminals is required. Transfer operates wholly within the city limits of Chicago. In operating as it does,

Transfer furnishes a link in the interstate transportation of passengers and baggage and is, therefore, subject to regulation by the Interstate Commerce Commission.

[fol. 159] Prior to contracting with Transfer for its transportation services, the railroads had utilized the services of another motor carrier, Parmelee Transportation Co. But, after the railroad engaged the services of Transfer, Chicago amended its municipal code, effecting a number of changes in its regulation of the type of services provided by Transfer. The most important change required Transfer to obtain a certificate of convenience and necessity from the Chicago Public Vehicle License Commissioner and the approval of the City Council before Transfer could legally transport passengers and baggage. Transfer refused to apply for a certificate, and Chicago threatened to arrest and fine Transfer's drivers if they drove unlicensed vehicles.

Transfer and the railroads sued in the federal district court to have the ordinance declared inapplicable to Transfer or invalid. The district court granted summary judgment against Transfer and the railroads. *Atchison, Topeka and Santa Fe Ry. Co.* v. *City of Chicago,* 136 F. Supp. 476 (N. D. Ill., 1955). This court reversed, holding that Transfer was an instrumentality of the railroads in interstate commerce and that its right to operate was subject to federal control under the commerce power. Chicago's attempted regulation was held to be unconstitutional, and Chicago could not prevent Transfer from operating in Chicago. *Atchison, Topeka & Santa Fe Ry. Co.* v. *City of Chicago,* 7 Cir., 240 F. 2d 930, 938 (1957).

The Supreme Court affirmed, holding that the provisions of the Interstate Commerce Act, 49 U.S.C.A. § 1 *et seq.,* precluded Chicago from preventing the transfer service. *Chicago* v. *Atchison, T. & S. F. R. Co.,* 357 U. S. 77, 84-87 (1958).

Subsequently, Chicago amended its ordinance.[1] As amended, it requires operators of terminal vehicles, such

[1] Chicago, Ill., Municipal Code § 28-1 *et seq.*

as Transfer, to obtain licenses, provided the vehicles are in safe and proper condition; to demonstrate financial responsibility; to maintain its principal office in Chicago; to use drivers residing in Chicago; to have comfortable vehicles; to use a color on its vehicles which is satisfactory to the Commissioner; and to obey orders, rules, and regula- [fol. 160] tions adopted or issued by the Commissioner.

The ordinance further gives either the Commissioner or the Mayor of Chicago discretion to revoke and suspend or deny licenses. The standards for such action are not expressed, and it is difficult to determine whether the ordinance, as written, provides for a hearing before revocation or denial of a license.

After the amendment of the ordinance, the Commissioner sent Transfer the following letter:

> "Please be advised that your company has not made application for the proper licenses for terminal vehicles operated by your company.
>
> "Please be further advised that unless your company complies with the provisions of the ordinance by Friday, September 22, 1961, you are hereby ordered by this office to cease and desist the operation of your vehicles until the ordinance of the City of Chicago has been fully complied with by your company."[2]

Transfer refused to apply for the licenses, instead filing suit for a declaratory judgment or injunction, alleging that Transfer was being discriminatorily required to pay a license or tax for the privilege of operating its vehicles and that the ordinance gave the Commission illegal discretionary power to recommend revocation of licenses.[3]

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[2] Chicago now admits that it has no power to stop Transfer's operations in interstate commerce.

[3] In 1960, prior to filing this case, Transfer applied for and received licenses for its vehicles from the Public Vehicle License Commissioner. Since then, Transfer has deposited the required license fees for 1961, 1962, and 1963 with the Clerk of the United States District Court.

The district court found, *inter alia*, the license fee charges to be a proper application of police powers and that, since Chicago had taken no action under the ordinance, there was, as yet, no actual controversy between the parties. The trial court dismissed Transfer's complaint.

Transfer appealed. This court vacated the judgment below and remanded on the ground that, unknown to [fol. 161] the trial court, the ordinance in question had been amended in two particulars prior to the dismissal. *Railroad Transfer Service, Inc.* v. *City of Chicago*, 334 F. 2d 991, 993 (1964).

On remand, the trial court found that the amendments of which it had not been previously aware did not affect its prior conclusions. Furthermore, one of the amendments had been rescinded in the interim, and the original reading of the ordinance had been restored prior to decision on remand. For the reasons that Chicago could validly tax and inspect Transfer's vehicles and that Chicago had taken no action detrimental to Transfer, the district court dismissed Transfer's second amended complaint. It is from this dismissal that Transfer has appealed.

Transfer argues that the trial court erred because the ordinance in question does not qualify as a permissible local safety regulation of interstate commerce. It contends that the ordinance bears little or no relationship to safety, but that it is an arbitrary effort by Chicago to regulate matters wholly unrelated to safety and to harass Transfer's operations. The ordinance, therefore, is claimed to constitute a serious impediment to interstate commerce.

Of course, if the Chicago ordinance can be said to conflict with federal regulatory measures so as to burden interstate commerce, or if federal regulation has pre-empted local regulation, then federal law must prevail. *Bibb* v. *Navajo Freight Lines*, 359 U.S. 520, 529 (1959); *Chicago* v. *Atchison, T. & S. F. R. Co.*, 357 U. S. 77, 87-88 (1958).

As written, however, the ordinance does not collide with federal preemption, nor has it been shown to conflict with existing federal regulations in any manner burdening commerce.

Since it is unquestioned that a state or locality may exercise police powers of regulation, if due process is accorded and they do not conflict with or unduly burden federal right, privilege, or authority, a case of this character would ordinarily turn on whether the Chicago ordinance is a regulation within legitimate police powers. [fol. 162] However, that is a question which need not now be determined, since the ordinance is not offensive on its face, has not been applied, and has not been shown to have burdened interstate commerce.

Continental Baking Co. v. *Woodring*, 286 U. S. 352 (1932) is in point. There, at pages 367-69, the Supreme Court stated:

> "The objection to the authority given to the public service commission 'to regulate and supervise the accounts, schedules, service and method of operation,' 'to prescribe a uniform system and classification of accounts,' to require the filing of reports and data, and generally to 'supervise and regulate' all the carriers to which the Act applies 'in all matters affecting the relationship' between such carriers and 'the traveling and shipping public' * * * similarly raises no question which can now be considered, as there has been no action or threat of action, so far as appears, by the commission giving ground for the contention that the constitutional rights of the appellants have been or will be violated. * * *. Whatever uncertainty may exist with respect to possible regulations of the commission will be resolved as regulations are promulgated. If any of these transcend constitutional limits, appellants will have their appropriate remedy. * * *.
>
> "The duty laid upon the commission * * * to insist that motor vehicles shall be maintained 'in a safe and sanitary condition,' to prescribe qualifications of operators as to age and hours of service, and to require the reporting of accidents, has manifest reference to considerations of safety. The terms of the statute do

not require action by the commission which does not have reasonable relation to that purpose. In this respect, as well as in relation to the other matters abovementioned, appellants had no right to resort to equity merely because of an anticipation of improper or invalid action in administration."

While the ultimate aim of the Chicago ordinance is not clear, the ordinance does have an apparent relation to [fol. 163] responsibility. To require Transfer to maintain its offices in Chicago, to have its drivers reside in Chicago, and to give proof of financial responsibility is but to establish accessible responsibility. Such requirements are reasonably within police powers of promotion of welfare. Similarly, to require comfortable vehicles is not remote from welfare, and a requirement for approval of a color or color scheme may relate merely to convenience of identification. Finally, a requirement that Transfer obey the orders, rules, and regulations of the Commissioner may ultimately be nothing but a safety and responsibility requirement, once they are adopted and issued and their substance made apparent.[4]

To state these possibilities is not to assume their correctness nor to approve the ordinance: it is merely a demonstration that the ordinance is not obviously arbitrary nor clearly unrelated to the legitimate ends of the police powers of a locality.

While Chicago's ordinance is not, as Transfer would have it, inscrutable as a safety and welfare ordinance, it is true that its relation to safety is not in all respects self-evident. It is also true that the ordinance does not clearly provide for administrative standards or a hearing before termination of a license to operate on the streets of Chicago. What, however, is unprovided for in the language of the ordinance may yet be provided in the course of its

[4] The Commissioner's first order to Transfer was that its employees be fingerprinted and examined by doctors. This was complied with.

application. We have no reason to assume that the application of the ordinance will not clarify its language in accordance with specific standards nor that a proper and just hearing will not be provided should the necessity arise. As it stands, the ordinance cannot be unequivocally classified and, until it is applied, it lacks the test whereby its real nature is revealed.

Transfer has not pleaded any injury and consequently has not shown any burden on interstate commerce. Transfer's apprehensions do not generate an actual controversy. If the ordinance is applied beyond constitutional limits, Transfer will have its appropriate remedy. *Continental Baking Co.* v. *Woodring, supra.*

[fol. 164] The district court found jurisdiction to entertain Transfer's second amended complaint under 28 U.S.C.A. § 1337.[5] We agree.

In sum, prior to the commencement of this action in 1960, Transfer complied with the provisions of the ordinance in question by making the necessary application for its Chicago vehicle licenses and paid the required fee of $1630 for the year 1960. Thereafter, it paid into court the required license fees for 1961, 1962 and 1963.

Since the filing of this action, Transfer has carried on its terminal transfer operation without interruption or interference by Chicago or any of the individual defendants.

Chicago's authority to assess and collect its annual vehicle license fee has been established and the amount in question here is reasonable.

Chicago concedes that it now has no right to prevent the operation of Transfer's business.

Transfer operates wholly within the city limits of Chicago, has a complete monopoly and is without competition, except by licensed taxicabs.

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[5] "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

The ordinance provisions concerning safety, comfort, drivers, color of vehicles and financial responsibility reasonably relate to welfare and safety and are clearly within the local police powers of Chicago and do not burden interstate commerce or conflict with federal regulatory powers.

There is no claim that the Commissioner or anyone else has issued any orders, rules or regulations in any way discriminating against Transfer.

There is no claim that Chicago or anyone else has applied the requirements of the ordinance in any manner to the detriment or harm of Tranfer.

There is no claim that Chicago or anyone else has acted under the ordinance in any manner to deny Transfer due process.

[fol. 165] Transfer's fears and apprehensions of what may happen to it under the ordinance have not been translated into realities.

No actual controversy has been presented to the district court as required by 28 U.S.C.A. § 2201.*

For the foregoing reasons, we hold that the district court did not err in dismissing Transfer's second amended complaint. The judgment order appealed from is affirmed.

AFFIRMED.

No. 15230

SWYGERT, Circuit Judge, dissenting.

Unfortunately, I find myself unable to agree with the views expressed by Chief Judge Hastings and concurred in by Judge Castle.

The import of the court's holding is that no actual controversy exists until the ordinance is applied to Trans-

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* "*In a case of actual controversy* within its jurisdiction, * * * any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration * * *." (Emphasis added.)

fer. Yet it is abundantly clear from the record and the city's brief that Chicago intends to enforce the ordinance against Transfer eventually.[1] A somewhat analogous prematurity argument was made during the course of the earlier litigation between the parties. The contention was that federal courts should not undertake to adjudicate the validity of the provision requiring a determination of public convenience and necessity before the issuance of a license until efforts to obtain an appropriate state court adjudication had been exhausted. The Court rejected the argument. *Chicago* v. *Atchison, T. & S. F. Ry.*, 357 U.S. 77, 84 (1958). More significantly, I think, the Court proceeded to dispose of the merits of the case despite the objection registered by Mr. Justice Harlan (Mr. Justice Frankfurter and Mr. Justice Burton joining in the dissent):

> [fol. 166] Nevertheless, the validity of the ordinance should not be determined until Transfer has applied to Chicago for a "terminal" license and the local authorities have had an opportunity to act on the application. Not until then will it be known whether the ordinance, as it may be applied to Transfer's operations trespasses upon paramount federal concerns. *Id.* at 89.

Transfer is operating at the city's sufferance, without having obtained a license. Before a license can be obtained Transfer must comply with at least one of the questioned requirements of the ordinance, namely, proof that it is financially responsible. In *Atchison* the issue was whether the City of Chicago could withhold the issuance of a license to Transfer until it had first been determined that public convenience and necessity required additional interterminal service. I see no difference in essence between the

---

[1] For example, see the letter addressed to plaintiff by the Public Vehicle License Commissioner quoted in the majority opinion.

requirement to obtain a determination of public convenience and necessity and the requirement that the plaintiff offer proof of its financial responsibility as a condition to the issuance of a license. In either event, the city is asserting a power to prevent an interstate operation, a power which it does not possess.

In *Atchison* the Court said:

> We are fully aware that use of local streets is involved, but no one suggests that Congress cannot require the city to permit interstate commerce to pass over those streets. Of course the City retains considerable authority to regulate how transfer vehicles shall be operated. It could hardly be denied, for example, that such vehicles must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require registration of these vehicles and exact reasonable fees for their use of the local streets. *Id.*, at 88.

In my opinion, not only the provision requiring proof of financial responsibility, but also the provisions which require that Transfer maintain its principal place of business in Chicago and that its drivers reside in that city have no relationship to the safety of plaintiff's operations. These [fol. 167] provisions are neither general traffic regulations nor safety measures. They do not fall within the permissible area open to local regulation as delineated by the Supreme Court in *Atchison*.

I would reverse the order of dismissal.

[fol. 168]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Before Hon. John S. Hastings, Chief Judge, Hon. Latham Castle, Circuit Judge, Hon. Luther M. Swygert, Circuit Judge.

No. 15230

RAILROAD TRANSFER SERVICE, INC., a Delaware Corporation, Plaintiff-Appellant,

vs.

THE CITY OF CHICAGO, et al., Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JUDGMENT—March 10, 1966

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment order of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the opinion of this Court filed this day.

[fol. 169] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 170]

SUPREME COURT OF THE UNITED STATES

No. 209, October Term, 1966

RAILROAD TRANSFER SERVICE, INC., Petitioner,

v.

THE CITY OF CHICAGO, et al.

ORDER ALLOWING CERTIORARI—October 10, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. ~~1394~~ 1209

RAILROAD TRANSFER SERVICE, INC., A Delaware Corporation,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, NOT INDIVIDUALLY, BUT AS MAYOR OF THE CITY OF CHICAGO; RAYMOND F. SIMON, NOT INDIVIDUALLY, BUT AS CORPORATION COUNSEL OF THE CITY OF CHICAGO; ORLANDO WILSON, NOT INDIVIDUALLY, BUT AS SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO; and JAMES CARTER, NOT INDIVIDUALLY, BUT AS PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

DAVID AXELROD,
ARNOLD L. BURKE,
AMOS M. MATHEWS,
Attorneys for Petitioner.

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THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO 5

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. .....

RAILROAD TRANSFER SERVICE, INC., A Delaware Corporation,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, NOT INDIVIDUALLY, BUT AS MAYOR OF THE CITY OF CHICAGO; RAYMOND F. SIMON, NOT INDIVIDUALLY, BUT AS CORPORATION COUNSEL OF THE CITY OF CHICAGO; ORLANDO WILSON, NOT INDIVIDUALLY, BUT AS SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO; and JAMES CARTER, NOT INDIVIDUALLY, BUT AS PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Railroad Transfer Service, Inc., a Delaware Corporation, petitioner herein, respectfully prays that a writ of certiorari issue to review the final judgment of the United States Court of Appeals for the Seventh Circuit entered in this cause on March 10, 1966.

OPINIONS BELOW.

The opinion of the Court of Appeals for which review is sought, and the dissenting opinion, are reported in 358 F. 2d 55, 59, and are printed in the Appendix hereto, pp. 23, 31. The Court of Appeals affirmed a judgment of the United States District Court for the Northern District of Illinois.

There were two opinions by the District Court and one earlier opinion by the Court of Appeals. The first District Court opinion (R. 138-145), granting respondent's motion to dismiss the complaint, is not reported. The Court of Appeals vacated this judgment on the ground that, unknown to the District Court, the ordinance in issue had been amended in 1963 during the litigation and before the judgment was entered. The remand called for consideration of the effect of the amendment. 334 F. 2d 991 (1964), App. p. 19. The district Court's second opinion (R. 147-151), granting respondent's motion to dismiss petitioner's second amended complaint, is not reported.

JURISDICTION.

The judgment of the Court of Appeals sought to be reviewed was dated and entered on March 10, 1966. Jurisdiction is conferred in this Court to review the judgment of the Court of Appeals by 28 U. S. C. § 1254 (1).

QUESTIONS PRESENTED FOR REVIEW.

1.

Whether petitioner, a motor carrier engaged by contract with 21 railroads in transferring interstate passengers between railroad stations in Chicago under authority of the Interstate Commerce Act, and receiving its entire compensation from the railroads, may be compelled by a Chicago

ordinance to file *annually* an application for authority to perform the transfer service where granting the application is conditioned upon—

a. A finding by a City official after investigation "that the applicant is qualified to pursue the occupation of a . . . coachman," the word "coachman" including petitioner by definition, and the word "qualified" being by context not related to traffic safety;

b. Total compliance with the requirements of the ordinance.

2.

Whether Chicago may by the ordinance compel petitioner—

a. To file annually with the City a comprehensive and detailed statement of its expenses and earnings in performing its transfer contract, and its balance sheet;

b. To afford City officials access to its business and financial books and records;

c. To employ only residents of Chicago as drivers of its vehicles;

d. To maintain its principal place of business in Chicago.

3.

Whether the instant action for a declaratory judgment that the contested provisions of the ordinance are invalid, and for an injunction against their enforcement, is appropriate and not premature.

STATUTES INVOLVED.

Chapter 28 of the Municipal Code of Chicago, with amendments since 1955, is printed in full in the Record, pp. 21-47. Pertinent provisions are set forth in the Appendix hereto, pp. 33-35.

Section 202(c) of the Interstate Commerce Act, 49 U.S.C. 302(c), 54 Stat. 920, 56 Stat. 300, is printed in the Appendix, pp. 36-37.

The Commerce Clause of the Constitution, Art. I, Sec. 8, Cl. 3: "The Congress shall have Power . . . To regulate Commerce . . . among the several States . . ."

STATEMENT OF THE CASE.

This action has its roots in the events that led to *Chicago* v. *Atchison, Topeka and Santa Fe Ry. Co.*, 357 U. S. 77 (1958). For many years before 1955 the Chicago railroads employed Parmelee Transportation Company to carry passengers traveling through Chicago from their incoming to their outgoing railroad stations. During this period a licensing ordinance that regulated various classes of "public passenger vehicles" included and defined a "terminal vehicle" as one that is operated under contracts with railroads exclusively for the transfer of railroad passengers between terminal stations. In June, 1955, the railroads advised Parmelee that, effective October 1, 1955, they would discontinue their arrangements with Parmelee and would engage petitioner to perform the transfer service. In July, 1955, the Chicago City Council amended the ordinance so as to (1) eliminate the contract requirement from the definition of terminal vehicle and (2) compel any new applicant for a terminal vehicle license to prove to the City Public Vehicle License Commissioner that the new service was required by the public convenience and neces-

sity. See 357 U. S. at pp. 79-81. This Court held the amendment invalid because in conflict with the Interstate Commerce Act. *Id.* at p. 85.

Soon thereafter, beginning in 1959, the Chicago City Council renewed its harassment of petitioner by various amendments to the public passenger vehicle ordinance. The amendments repealed the requirement of proof of public convenience and necessity, but by new sections and additions to old sections they created new economic regulations aimed squarely at petitioner.

In 1959 an amendment to section 28-6 added to the ordinance as a condition to issuance of an annual license the requirement that the commissioner "shall find that the applicant is qualified to pursue the occupation of a cabman or coachman" (R. 29). This amendment is not related in context to traffic safety; instead it implements or is implemented by other post-1958 amendments providing economic regulation.

An amendment added in 1959, section 28-5.1 (R. 30), requires that all "corporate applicants for public passenger vehicle licenses shall . . . have their principal places of business in the City of Chicago."

In 1963 a section theretofore applicable only to taxicab operators, 28-30.1, was amended so as to cover "every . . . corporation", thus bringing petitioner within its terms. This section (R. 44) provides that every corporation shall keep accurate books of account at its Chicago office and shall annually on or before May 1 file with the Commissioner a profit and loss statement for the preceding calendar year showing in great detail its earnings and expenses, and its balance sheet at the end of the year. The Commissioner is granted access to the corporation's records "during normal business hours". As we have noted above, the first opinion of the Court of Appeals, 334 F. 2d

991, remanding to the District Court, called for consideration of the 1963 amendments.

The definition of "chauffeur" in section 28-1 of the ordinance (App. p. 33, R. 29) requires the construction that drivers of petitioner's vehicles must be residents of Chicago.

The 1959 amendments were made effective on January 1, 1960 (R. 32). On August 19, 1960, the Public Vehicle License Commissioner demanded that petitioner make application for licenses and comply with the ordinance. On August 26, 1960, petitioner made application for licenses for its vehicles under protest in order to protect its right to seek judicial relief. The City refused to accept an application with a protest and advised that unless the protest was withdrawn petitioner's vehicles would not be permitted to operate. Thereupon petitioner, conceiving itself faced with an emergency, paid the 1960 license fees and partially complied with the ordinance in other respects (R. 129-130, 72-75).

On September 23, 1960, petitioner commenced the instant action by filing its complaint in the District Court for declaratory judgment that the ordinance is in conflict with the Interstate Commerce Act and the Commerce Clause (R. 1). The case eventually went to final hearing on petitioner's second amended complaint for declaratory judgment and injunction (R. 5-50) and affidavit (R. 129-132), and respondent's motion to dismiss (R. 51-68) and affidavit (R. 70-116). License fees accruing annually were deposited by petitioner with the clerk of the District Court (R. 145-146).

JURISDICTION OF THE DISTRICT COURT.

The District Court had jurisdiction under 28 U. S. C. § 1337 to determine whether the provisions of the ordinance in issue are invalid because in conflict with the Interstate Commerce Act. *Peyton* v. *Railway Express Agency, Inc.*, 316 U. S. 350, 353 (1942): *Lyons* v. *Illinois Greyhound Lines*, 192 F. 2d 533-535 (7th Cir. 1951).

REASONS FOR GRANTING THE WRIT.

I.

THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH CHICAGO v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, 357 U. S. 77 (1958), AND OTHER APPLICABLE DECISIONS OF THIS COURT. THE DISSENTING OPINION IS IN ACCORD WITH APPLICABLE LAW.

A. In Respect to the Requirement That Petitioner Must Establish That It Is "Qualified to Pursue the Occupation of a . . . Coachman" in Order to Obtain a License.

After the decision in *Chicago* v. *Atchison, Topeka & Santa Fe Railway Company*, 357 U. S. 77, holding invalid the requirement that petitioner must obtain a certificate of public convenience and necessity in order to perform the inter-station transfer service, the City amended the ordinance. The City repealed (R. 32, Sec. 6) the public convenience and necessity section struck down by this Court (Sec. 28-31.1; 357 U. S. at page 80) but at the same time amended section 28-6 in the same ordinance by adding a new requirement that petitioner must prove *annually* to the Commissioner of licenses that it is "qualified to pursue the occupation of a . . . coachman" before the license to transfer passengers between stations may be granted.

Thus, in 1958, at the time of the decision in *Atchison*, section 28-6 of the ordinance was the following (R. 22-23):

> "Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the

financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition as provided in this chapter, the commissioner shall issue a public passenger vehicle license to the owner of the vehicle for the license period ending on the thirty-first day of December following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year. [Passed. Coun. J. 12-20-51. p. 1596: amend. 4-16-52, p. 2178.]"

In 1959, as stated above, the City amended section 28-6 by striking out the last sentence and substituting therefor the following (R. 29, Sec. 2):

"If the commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed and that the applicant is qualified to pursue the occupation of a cabman or coachman, the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued."

It is plain that the amendment added nothing to section 28-6, or to any other section, that pertained to safety of operation and equipment. But it did add the requirement that the Commissioner is to consider *each year* whether "the applicant is *qualified to pursue the occupation* of a cabman or coachman" (emphasis supplied). This clause is phrased strictly in terms of economic regulation that cannot be applied by the city to interstate commerce. *Adams*

Express Co. v. *New York*, 232 U. S. 14, 32 (1914). The City is here, as in *Adams Express*, attempting to regulate the carrying on of an interstate business. The City is here, as in *Atchison, supra*, claiming "at least some power . . . to decide whether a motor carrier may transport passengers from one station to another". 357 U. S. at 85.

The setting in which this amendment was enacted emphasizes its meaning. Having been defeated in its effort to compel petitioner to prove public convenience and necessity, the City in an obvious and blatant effort to avoid the clear meaning of this Court's decision merely substituted therefor the requirement that petitioner prove that it is qualified before a license is issued.

Whether petitioner is qualified to operate as a carrier in interstate commerce transferring passengers between railroad stations under a contract with the railroads, pursuant to provisions of the Interstate Commerce Act, is the concern of the railroads and the Interstate Commerce Commission, not of the City of Chicago. Indeed, this Court has already stated in crystal clear language: "The Act authorizes the railroads to engage in this transfer operation themselves or to select such agents as they see fit for that purpose without leave from local authorities" (*Atchison, supra*, 357 U. S. at page 87).

In *Atchison* the Court said in respect to the public convenience and necessity requirement:

> "Although counsel for the City denies that it will use this power to exclude proposed transfer operations wholly or primarily because of economic considerations . . . it is clear that the City claims *at least some power* under § 28-31.1 to decide whether a motor carrier may transport passengers from one station to another" (357 U. S. at page 85). (Emphasis supplied.)

Later in the opinion the Court pointed out:

> "Of course the City retains considerable authority

to regulate how Transfer's vehicles shall be operated. It could hardly be denied, for example, that such vehicles must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require registration of those vehicles and exact reasonable fees for their use of the local streets" (page 88).

The City has not complied with the mandate of this Court to restrict its regulation to general safety matters and the exaction of reasonable fees for the use of its streets. Instead, it has continued to claim "at least some power" to determine whether petitioner has a right to operate even if it complies with general safety regulations and pays its license fees.* Once again, therefore, petitioner is required to seek relief from this Court.

Harman v. *Forssenius*, 380 U. S. 528 (1965), presents a similar case of die-hard effort to impair Constitutional rights. A state law required a voter who did not pay the outlawed poll tax to file in every election year a form which amounted to an application for the right to vote. Terming this a "cumbersome procedure" (pp. 541-542) designed to circumvent rights granted by the Twenty-fourth Amendment, the Court held it invalid. Similarly, a requirement that petitioner shall *every year* prove to the satisfaction of the City that it is "qualified to pursue the occupation" of transferring passengers is a "cumbersome procedure" that violates petitioner's rights under the Commerce Clause and the Interstate Commerce Act. Paraphrasing the Court's opinion (pp. 540-541): The Commerce Clause, like the Twenty-fourth Amendment, "nullifies sophisticated as well as simple-minded modes of impairing the right granted. . . . It hits onerous procedural requirements which effec-

* We are not aware of any ground for the statement of the Court of Appeals, 358 F. 2d at page 57, App. p. 25, footnote 2, that "Chicago now admits that it has no power to stop Transfer's operations in interstate commerce."

tively handicap exercise of" Federally granted rights (380 U. S. pp. 540-541).

The Court of Appeals relied exclusively upon *Continental Baking Co.* v. *Woodring*, 286 U. S. 352 (1932), and plainly erred in its application of that decision to the case at bar. The Court quoted extracts from pages 367-369 of *Continental Baking*, 358 F. 2d at 57-58, App. p. 27, but omitted part of page 368 which clearly distinguishes *Continental Baking* from this case. The Court of Appeals left out passages on page 368 in which this Court expressly distinguished *Continental Baking* from *Smith* v. *Cahoon*, 283 U. S. 553 (1931). In the case at bar, as in *Smith* v. *Cahoon*, petitioner is threatened with enforcement of the plain terms of a specific legislative enactment which cannot lawfully be applied to it, whereas in *Continental Baking* "the statute itself clearly distinguishes in fundamental matters between the obligations of public and private carriers" (p. 368). *Smith* v. *Cahoon* sustains petitioner here, and was relied upon by this Court in *Atchison, supra*, 357 U. S. at 89. Moreover, since *Continental Baking* was decided Congress has by section 202(c) of the Interstate Commerce Act, 49 U. S. C. 302(c), 54 Stat. 920, specifically "extend[ed] freedom from local restraints to the movement of interstate traffic between railroad terminals," 357 U. S. at 87-88.

B. In Respect to Specific Provisions of the Ordinance.

The Court of Appeals summarized part of its holding as follows:

> "While the ultimate aim of the Chicago ordinance is not clear, the ordinance does have an apparent relation to responsibility. To require transfer to maintain its office in Chicago, to have its drivers reside in Chicago, and to give proof of financial responsibility is but to establish accessible responsibility. Such requirements are reasonably within police powers of promotion of welfare." (App. p. 28, 358 F. 2d at 58).

In this the Court of Appeals was clearly in conflict with decisions of this Court. In respect to petitioner's specialized service, the contested provisions of the ordinance are properly characterized and condemned by *Frost & Frost Trucking Co.* v. *Railroad Commission*, 271 U. S. 583, 591 (1926):

> "[T]he act, as thus applied, is in no sense a regulation of the use of the public highways. *It is a regulation of the business of those who are engaged in using them.*" (Emphasis supplied.)

The City may not impose the requirement that petitioner shall file annually with the City a detailed statement of its expenses and earnings, and its balance sheet, and afford the City access to its books. These matters are not conceivably related to traffic safety or any other legitimate concern of the City. Here the City seeks to impose upon petitioner the same financial supervision that it exercises over public taxicabs whose rates and service are under the City's control. A similar assertion of power was condemned by this Court in *Smith* v. *Cahoon*, 283 U. S. 553, 563 (1931):

> "[T]he scheme was obviously one for the supervision and control of those carriers which, by reason of the nature of their undertaking or business, were subject to regulation by public authority in relation to rates and service. . . . Such a scheme of regulation of the business of a private carrier . . . is manifestly beyond the power of the state."

Petitioner is indeed a private contract carrier, accepting only passengers having contracts for carriage with its principals, the railroads, and receiving compensation only from the railroads. Additionally petitioner and the railroads are subject to the exclusive jurisdiction of the Interstate Commerce Commission in respect to the financial matters which the City here seeks to supervise. 49 U. S. C. 302(c)(2); *Chicago* v. *A. T. & S. F. Ry. Co.*, 357 U. S. 77, 86-87.

The restriction that only residents of Chicago may be employed as chauffeurs is obviously unreasonable and unrelated to traffic safety, particularly in view of the fact that Chicago is closely packed in on three sides by numerous separate residential municipalities. Long ago this Court condemned a provision of an ordinance of the City of New York which had the practical effect of limiting drivers of express wagons to residents of that city. *Adams Express Co.* v. *New York*, 232 U. S. 14, 34 (1914):

> "When . . . the obvious convenience of their being able to secure drivers in Jersey City as well as in New York, are considered, the provision would seem to be unnecessarily burdensome."

Likewise, petitioner, a Delaware corporation authorized to do business in Illinois, cannot lawfully be compelled to maintain its principal place of business in Chicago. Such a requirement obviously would have a ruinously splintering impact upon enterprises engaged in interstate commerce. The City may not regulate interstate commerce in this fashion. Compare *Toomer* v. *Witsell*, 334 U. S. 385, 395-403, and concurring opinion, 407-409 (1948). The requirements of this ordinance are clearly distinguishable from those where a State or municipality requires out of state carriers to maintain registered agents and sufficient insurance coverage.

In at least three recent landmark decisions* this Court, acknowledging the power of State and local governments to regulate interstate carriers as to general safety matters, has struck down local regulatory measures which do not deal with safety of the carrier's operations but instead merely harass, obstruct or impede its interstate operation. Petitioner does not challenge the right of the City of Chi-

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* *Chicago* v. *Atchison, Topeka & Santa Fe Railroad Company*, 357 U. S. 77; *Castle* v. *Hayes Freight Lines, Inc.*, 348 U. S. 61, 64; *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U. S. 520, 529.

cago to require its vehicles to "obey traffic signals, speed limits and other general safety regulations" nor does it challenge the right of the City of Chicago to "exact reasonable fees for [its] use of the local streets." Petitioner has consistently obeyed all safety regulations and paid all fees exacted by the City and State for use of the streets.

This Court in *Atchison* clearly pointed out that the City has no power to regulate petitioner in respect to the matters in controversy when it said:

> "National rather than local control of interstate railroad transportation has long been the policy of Congress. It is not at all extraordinary that Congress should extend freedom from local restraints to the movement of interstate traffic" (357 U. S. at pages 87-88).

The total lack of relationship between the contested regulations and safety, and the inclusion of the elements of public convenience and necessity which petitioner must prove to establish that it is "qualified to pursue the occupation of a . . . coachman," make it clear that in this ordinance as amended the City has attempted to cancel the mandate of this Court in *Atchison*. That attempt should be struck down by the Court.

II.

THE INSTANT ACTION IS APPROPRIATE AND IS NOT PREMATURE, AND THE CONTRARY HOLDING OF THE COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF THIS COURT.

The judgment of the Court of Appeals was the following: "No actual controversy has been presented to the District Court as required by 28 U. S. C. A. § 2201" (the declaratory judgment provision). 358 F. 2d at 59, App. p. 30. While the Court's reasons for this conclusion do not seem clear,

apparently the Court decided that the ordinance is not unequivocally invalid on its face and that petitioner must await until the ordinance is forcibly applied before seeking judicial relief. The Court apparently overlooked that petitioner has been advised by the City on *at least two occasions* that it must comply fully with all provisions of the ordinance or be barred from using the streets. (R. 129-131, 70, 132.) The Court conceded that "the ultimate aim of the ordinance is not clear," that "it is true that its relation to safety is not in all respects self-evident", and that "As it stands, the ordinance cannot be unequivocally classified and, until it is applied, it lacks the test whereby its real nature is revealed." 358 F. 2d at 58, App. pp. 28, 29.

The Court was plainly in error and its concessions emphasize its error. The ordinance is invalid on its face in the particulars set forth above, and petitioner is entitled to seek judicial relief without submitting to the Commissioner *every year* the issue whether petitioner is "qualified to pursue the occupation" of transferring passengers, and to test the other questioned provisions. *Chicago* v. *Atchison, Topeka and Santa Fe Ry. Co.*, 357 U. S. 77, 89.

Petitioner has the responsibility of transferring thousands of railroad passengers between Chicago stations every day and it must maintain an adequate fleet of specialized motor vehicles and a highly experienced staff. It cannot be subjected to the uncertainty every year as to whether a city official, representing an obviously unfriendly City Council, is going to certify that it is "qualified to pursue the occupation" of transferring passengers. It cannot be compelled to seek the City's grace in that respect. The fact that licenses were issued to petitioner in 1960 does not, under the specific terms of the ordinance, bind the City to issue them in subsequent years. *The uncertainty in that regard was deliberately created by the City.* No better case for declaratory relief could be imagined.

In *Atchison*, the City also argued that petitioner must await final action by it, before attacking the ordinance. This Court rejected that argument in *Atchison* and it should do so in the instant proceeding for the same reasons (357 U. S. at pages 84-85).

CONCLUSION.

Wherefore, petitioner prays that certiorari be granted to review the judgment below.

Respectfully submitted,

DAVID AXELROD,
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Attorneys for Petitioner.

APPENDIX.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

No. 14479 September Term, 1963 April Session, 1964

Railroad Transfer Service, Inc., a Delaware corporation,
Plaintiff-Appellant,
v.
City of Chicago, a municipal corporation; Richard J. Daley, Mayor; John C. Melaniphy, Corporation Counsel; Orlando Wilson, Superintendent of Police, and James Carter, Public Vehicle License Commissioner,
Defendants-Appellees.

Appeal from the United States District Court of the Northern District of Illinois, Eastern Division.

July 20, 1964

Before SCHNACKENBERG, KNOCH and CASTLE, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* On December 13, 1963, Railroad Transfer Service. Inc., a Delaware corporation, plaintiff, appealed from a judgment of the district court entered November 27, 1963 dismissing plaintiff's first amended complaint filed October 31, 1963, which prayed for a declaratory judgment that section 28-1, *et seq.* of the

municipal code of Chicago be held unconstitutional and void, and that the city and other defendants be enjoined from enforcing it against plaintiff.

The facts are not in dispute. Plaintiff has its principal place of business in the City of Chicago, and, under contracts with the railroads, which operate to and from Chicago rail terminals, it transports rail passengers and baggage between said terminals. Otherwise it does not operate as a for-hire carrier. All of the railroad terminals which are served by Transfer are located in the downtown area of Chicago.[1]

On August 24, 1959, defendant city by ordinance amended its existing § 28-1 of the municipal code relating to public passenger vehicles, and thereby expressly defined the term "Terminal Vehicle" in such a way as to describe plaintiff's service and imposed a specified annual license fee for each such vehicle. The ordinance also granted to the Public Vehicle License Commissioner of the city authority to determine the financial responsibility of the licensee, and whether vehicles are safe as well as comfortable, as well as other powers of supervision over plaintiff's vehicles. The ordinance also required that plaintiff maintain its principal office in the City of Chicago, that its drivers reside in that city and that the color of its vehicles be approved by the Commissioner.

Under date of September 15, 1961, the Commissioner by letter notified plaintiff that unless it applied for licenses for its vehicles by September 22, 1961, it was to cease operation until the ordinance had been fully complied with.

This litigation followed.

After plaintiff filed its brief in this court on March 17,

[1] This service is described in our earlier decision in *Atchison, Topeka & Santa Fe Railroad Company* v. *City of Chicago*, 240 F.2d 930 (1957), affirmed, 357 U.S. 77-88 (1958).

1964, defendants filed their brief here on May 6. 1964 and stated therein that the City of Chicago on July 1, 1963 amended the ordinance here involved so that § 28-15.1 now provides:

> In the event that the Commissioner [Public Vehicle License Commissioner] after investigation and hearing, shall determine that any licensee . . . shall fail to carry out any representation made to the Commissioner before the issuance of such license, or shall wilfully make any material misstatement of fact on any statement filed with the Commissioner, or if any . . . coachman [plaintiff is a coachman under section 28-1 (m) of said ordinance as amended July 1, 1963, p. 575 of said Council Proceedings] while in charge of a public passenger vehicle, as a chauffeur, shall operate any public passenger vehicle in violation of the provisions of this chapter or of the rules and regulations of the Commissioner relating to the administration and enforcement of the provisions of this chapter, the Commissioner may recommend to the Mayor that all public passenger vehicle licenses held by him be revoked and the Mayor, in his discretion, may revoke said licenses.

Theretofore said section read as follows:

> 28-15.1 *Discretionary Revocation of License.*) If any public passenger vehicle license was obtained by application in which any material fact was omitted or stated falsely, or if any cabman or coachman, while in charge of a public passenger vehicle as a chauffeur, shall operate any public passenger vehicle in violation of the provisions of this chapter or of the rules and regulations of the commissioner relating to the administration and enforcement of the provisions of this chapter, the commissioner may recommend to the mayor that all public passenger vehicle licenses held by him be revoked and the mayor, in his discretion, may revoke said licenses.

Plaintiff, when it filed its reply brief on June 1, 1964, stated that the reading of defendants' brief was the first time that plaintiff learned of this amendment of the ordinance. It contends with considerable logic that the date of this amendment to the ordinance was prior to the time that defendants filed a motion to strike the first amended complaint, which was November 21, 1963, "almost four months after the ordinance had been amended eliminating 'terminal vehicles' from its scope." Plaintiff points out that it was on November 27, 1963 that the court's final order was entered herein.

Plaintiff argues from these facts that the copy of the ordinance attached to defendants' motion to dismiss had been amended four months earlier and yet the defendants were silent about the "sweeping amendment". If so, it contends that the district court ruled without knowledge that the ordinance it was construing had been materially amended four months earlier; and that "terminal vehicles" had been removed from the ordinance. This amendment was disclosed to us for the first time in the defendants' brief filed in this Court. We express no opinion at this time as to this phase of the appeal.

In order that complete justice may be done in this case under these unusual circumstances, it is the order of this court that the judgment of the district court be vacated and this cause remanded to that court for further proceedings consistent with the facts now appearing in the record before us.

JUDGMENT VACATED AND CAUSE REMANDED WITH DIRECTIONS.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

September Term, 1965—January Session, 1966.

No. 15230
RAILROAD TRANSFER SERVICE, INC., a Delaware Corporation,
Plaintiff-Appellant,
v.
THE CITY OF CHICAGO, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

March 10, 1966

Before HASTINGS, *Chief Judge*, and CASTLE and SWYGERT, *Circuit Judges.*

HASTINGS, *Chief Judge.* Railroad Transfer Service, Inc., has appealed from an order of the district court dismissing its second amended complaint for declaratory and injunctive relief against the City of Chicago, Illinois (and certain of its designated officials) on the ground that Transfer had not presented the court with an actual controversy.

Transfer operates a transportation service for 21 railroads having terminals in Chicago, transporting passengers and baggage from one terminal to another when a change of terminals is required. Transfer operates wholly within the city limits of Chicago. In operating as it does, Transfer furnishes a link in the interstate transportation of passengers and baggage and is, therefore, subject to regulation by the Interstate Commerce Commission.

Prior to contracting with Transfer for its transportation services, the railroads had utilized the services of another motor carrier, Parmelee Transportation Co. But, after the railroad engaged the services of Transfer, Chicago amended its municipal code, effecting a number of changes in its regulation of the type of services provided by Transfer. The most important change required Transfer to obtain a certificate of convenience and necessity from the Chicago Public Vehicle License Commissioner and the approval of the City Council before Transfer could legally transport passengers and baggage. Transfer refused to apply for a certificate, and Chicago threatened to arrest and fine Transfer's drivers if they drove unlicensed vehicles.

Transfer and the railroads sued in the federal district court to have the ordinance declared inapplicable to Transfer or invalid. The district court granted summary judgment against Transfer and the railroads. *Atchison, Topeka and Santa Fe Ry. Co.* v. *City of Chicago*, 136 F. Supp. 476 (N. D. Ill., 1955). This court reversed, holding that Transfer was an instrumentality of the railroads in interstate commerce and that its right to operate was subject to federal control under the commerce power. Chicago's attempted regulation was held to be unconstitutional, and Chicago could not prevent Transfer from operating in Chicago. *Atchison, Topeka & Santa Fe Ry. Co.* v. *City of Chicago*, 7 Cir., 240 F. 2d 930, 938 (1957).

The Supreme Court affirmed, holding that the provisions of the Interstate Commerce Act, 49 U.S.C.A. § 1 *et seq.*, precluded Chicago from preventing the transfer service. *Chicago* v. *Atchison, T. & S. F. R. Co.*, 357 U. S. 77, 84-87 (1958).

Subsequently, Chicago amended its ordinance.[1] As amended, it requires operators of terminal vehicles, such

1. Chicago, Ill., Municipal Code § 28-1 *et. seq.*

as Transfer, to obtain licenses, provided the vehicles are in safe and proper condition; to demonstrate financial responsibility; to maintain its principal office in Chicago; to use drivers residing in Chicago; to have comfortable vehicles; to use a color on its vehicles which is satisfactory to the Commissioner; and to obey orders, rules, and regulations adopted or issued by the Commissioner.

The ordinance further gives either the Commissioner or the Mayor of Chicago discretion to revoke and suspend or deny licenses. The standards for such action are not expressed, and it is difficult to determine whether the ordinance, as written, provides for a hearing before revocation or denial of a license.

After the amendment of the ordinance, the Commissioner sent Transfer the following letter:

> "Please be advised that your company has not made application for the proper licenses for terminal vehicles operated by your company.
>
> "Please be further advised that unless your company complies with the provisions of the ordinance by Friday, September 22, 1961, you are hereby ordered by this office to cease and desist the operation of your vehicles until the ordinance of the City of Chicago has been fully complied with by your company."[2]

Transfer refused to apply for the licenses, instead filing suit for a declaratory judgment or injunction, alleging that Transfer was being discriminatorily required to pay a license or tax for the privilege of operating its vehicles and that the ordinance gave the Commission illegal discretionary power to recommend revocation of licenses.[3]

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2. Chicago now admits that it has no power to stop Transfer's operations in interstate commerce.

3. In 1960, prior to filing this case, Transfer applied for and received licenses for its vehicles from the Public Vehicle License Commissioner. Since then, Transfer has deposited the required license fees for 1961, 1962, and 1963 with the Clerk of the United States District Court.

The district court found, *inter alia*, the license fee charges to be a proper application of police powers and that since Chicago had taken no action under the ordinance, there was, as yet, no actual controversy between the parties. The trial court dismissed Transfer's complaint.

Transfer appealed. This court vacated the judgment below and remanded on the ground that, unknown to the trial court, the ordinance in question had been amended in two particulars prior to the dismissal. *Railroad Transfer Service, Inc.* v. *City of Chicago*, 334 F. 2d 991, 993 (1964).

On remand, the trial court found that the amendments of which it had not been previously aware did not affect its prior conclusions. Furthermore, one of the amendments had been rescinded in the interim, and the original reading of the ordinance had been restored prior to decision on remand. For the reasons that Chicago could validly tax and inspect Transfer's vehicles and that Chicago had taken no action detrimental to Transfer, the district court dismissed Transfer's second amended complaint. It is from this dismissal that Transfer has appealed.

Transfer argues that the trial court erred because the ordinance in question does not qualify as a permissible local safety regulation of interstate commerce. It contends that the ordinance bears little or no relationship to safety, but that it is an arbitrary effort by Chicago to regulate matters wholly unrelated to safety and to harass Transfer's operations. The ordinance, therefore, is claimed to constitute a serious impediment to interstate commerce.

Of course, if the Chicago ordinance can be said to conflict with federal regulatory measures so as to burden interstate commerce, or if federal regulation has preempted local regulation, then federal law must prevail. *Bibb* v. *Navajo Freight Lines*, 359 U. S. 520, 529 (1959); *Chicago* v. *Atchison, T. & S. F. R. Co.*, 357 U. S. 77, 87-88 (1958).

As written, however, the ordinance does not collide with federal preemption, nor has it been shown to conflict with existing federal regulations in any manner burdening commerce.

Since it is unquestioned that a state or locality may exercise police powers of regulation, if due process is accorded and they do not conflict with or unduly burden federal right, privilege, or authority, a case of this character would ordinarily turn on whether the Chicago ordinance is a regulation within legitimate police powers. However, that is a question which need not now be determined, since the ordinance is not offensive on its face, has not been applied, and has not been shown to have burdened interstate commerce.

Continental Baking Co. v. *Woodring*, 286 U. S. 352 (1932), is in point. There, at pages 367-69, the Supreme Court stated:

> "The objection to the authority given to the public service commission 'to regulate and supervise the accounts, schedules, service and method of operation,' 'to prescribe a uniform system and classification of accounts,' to require the filing of reports and data, and generally to 'supervise and regulate' all the carriers to which the Act applies 'in all matters affecting the relationship' between such carriers and 'the traveling and shipping public' * * * similarly raises no question which can now be considered, as there has been no action or threat of action, so far as appears, by the commission giving ground for the contention that the constitutional rights of the appellants have been or will be violated. * * * Whatever uncertainty may exist with respect to possible regulations of the commission will be resolved as regulations are promulgated. If any of these transcend constitutional limits, appellants will have their appropriate remedy. * * *
>
> "The duty laid upon the commission * * * to insist that motor vehicles shall be maintained 'in a safe and sanitary condition,' to prescribe qualifications of

operators as to age and hours of service, and to require the reporting of accidents, has manifest reference to considerations of safety. The terms of the statute do not require action by the commission which does not have reasonable relation to that purpose. In this respect, as well as in relation to the other matters above-mentioned, appellants had no right to resort to equity merely because of an anticipation of improper or invalid action in administration."

While the ultimate aim of the Chicago ordinance is not clear, the ordinance does have an apparent relation to responsibility. To require Transfer to maintain its offices in Chicago, to have its drivers reside in Chicago, and to give proof of financial responsibility is but to establish accessible responsibility. Such requirements are reasonably within police powers of promotion of welfare. Similarly, to require comfortable vehicles is not remote from welfare, and a requirement for approval of a color or color scheme may relate merely to convenience of identification. Finally, a requirement that Transfer obey the orders, rules, and regulations of the Commissioner may ultimately be nothing but a safety and responsibility requirement, once they are adopted and issued and their substance made apparent.[4]

To state these possibilities is not to assume their correctness nor to approve the ordinance: it is merely a demonstration that the ordinance is not obviously arbitrary nor clearly unrelated to the legitimate ends of the police powers of a locality.

While Chicago's ordinance is not, as Transfer would have it, inscrutable as a safety and welfare ordinance, it is true that its relation to safety is not in all respects self-evident. It is also true that the ordinance does not clearly

4. The Commissioner's first order to Transfer was that its employees be fingerprinted and examined by doctors. This was complied with.

provide for administrative standards or a hearing before termination of a license to operate on the streets of Chicago. What, however, is unprovided for in the language of the ordinance may yet be provided in the course of its application. We have no reason to assume that the application of the ordinance will not clarify its language in accordance with specific standards nor that a proper and just hearing will not be provided should the necessity arise. As it stands, the ordinance cannot be unequivocally classified and, until it is applied, it lacks the test whereby its real nature is revealed.

Transfer has not pleaded any injury and consequently has not shown any burden on interstate commerce. Transfer's apprehensions do not generate an actual controversy. If the ordinance is applied beyond constitutional limits, Transfer will have its appropriate remedy. *Continental Baking Co. v. Woodring, supra.*

The district court found jurisdiction to entertain Transfer's second amended complaint under 28 U. S. C. A. § 1337.[5] We agree.

In sum, prior to the commencement of this action in 1960, Transfer complied with the provisions of the ordinance in question by making the necessary application for its Chicago vehicle licenses and paid the required fee of $1630 for the year 1960. Thereafter, it paid into court the required license fees for 1961, 1962 and 1963.

Since the filing of this action, Transfer has carried on its terminal transfer operation without interruption or interference by Chicago or any of the individual defendants.

Chicago's authority to assess and collect its annual vehicle license fee has been established and the amount in question here is reasonable.

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5. "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

Chicago concedes that it now has no right to prevent the operation of Transfer's business.

Transfer operates wholly within the city limits of Chicago, has a complete monopoly and is without competition, except by licensed taxicabs.

The ordinance provisions concerning safety, comfort, drivers, color of vehicles and financial responsibility reasonably relate to welfare and safety and are clearly within the local police powers of Chicago and do not burden interstate commerce or conflict with federal regulatory powers.

There is no claim that the Commissioner or anyone else has issued any orders, rules or regulations in any way discriminating against Transfer.

There is no claim that Chicago or anyone else has applied the requirements of the ordinance in any manner to the detriment or harm of Transfer.

There is no claim that Chicago or anyone else has acted under the ordinance in any manner to deny Transfer due process.

Transfer's fears and apprehension of what may happen to it under the ordinance have not been translated into realities.

No actual controversy has been presented to the district court as required by 28 U. S. C. A. § 2201.[6]

For the foregoing reasons, we hold that the district court did not err in dismissing Transfer's second amended complaint. The judgment order appealed from is affirmed.

AFFIRMED.

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6. "*In a case of actual controversy* within its jurisdiction, • • • any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration • • •." (Emphasis added.)

No. 15230

SWYGERT, *Circuit Judge,* dissenting.

Unfortunately, I find myself unable to agree with the views expressed by Chief Judge Hastings and concurred in by Judge Castle.

The import of the court's holding is that no actual controversy exists until the ordinance is applied to Transfer. Yet it is abundantly clear from the record and the city's brief that Chicago intends to enforce the ordinance against Transfer eventually.[1] A somewhat analogous prematurity argument was made during the course of the earlier litigation between the parties. The contention was that federal courts should not undertake to adjudicate the validity of the provision requiring a determination of public convenience and necessity before the issuance of a license until efforts to obtain an appropriate state court adjudication had been exhausted. The Court rejected the argument. *Chicago* v. *Atchison, T. & S. F. Ry.*, 357 U. S. 77, 84 (1958). More significantly, I think, the Court proceeded to dispose of the merits of the case despite the objection registered by Mr. Justice Harlan (Mr. Justice Frankfurter and Mr. Justice Burton joining in the dissent):

> Nevertheless, the validity of the ordinance should not be determined until Transfer has applied to Chicago for a "terminal" license and the local authorities have had an opportunity to act on the application. Not until then will it be known whether the ordinance, as it may be applied to Transfer's operations trespasses upon paramount federal concerns. *Id.* at 89.

Transfer is operating at the city's sufferance, without having obtained a license. Before a license can be obtained Transfer must comply with at least one of the questioned

1. For example, see the letter addresed to plaintiff by the Public Vehicle License Commissioner quoted in the majority opinion.

requirements of the ordinance, namely, proof that it is financially responsible. In *Atchison* the issue was whether the City of Chicago could withhold the issuance of a license to Transfer until it had first been determined that public convenience and necessity required additional interterminal service. I see no difference in essence between the requirement to obtain a determination of public convenience and necessity and the requirement that the plaintiff offer proof of its financial responsibility as a condition to the issuance of a license. In either event, the city is asserting a power to prevent an interstate operation, a power which it does not possess.

In *Atchison* the Court said:

> We are fully aware that use of local streets is involved, but no one suggests that Congress cannot require the city to permit interstate commerce to pass over those streets. Of course the City retains considerable authority to regulate how transfer vehicles shall be operated. It could hardly be denied, for example, that such vehicles must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require registration of these vehicles and exact reasonable fees for their use of the local streets. *Id.* at 88.

In my opinion, not only the provision requiring proof of financial responsibility, but also the provisions which require that Transfer maintain its principal place of business in Chicago and that its drivers reside in that city have no relationship to the safety of plaintiff's operations. These provisions are neither general traffic regulations nor safety measures. They do not fall within the permissible area open to local regulation as delineated by the Supreme Court in *Atchison*.

I would reverse the order of dismissal.

EXTRACTS FROM CHAPTER 28, "PUBLIC PASSENGER VEHICLES," OF THE MUNICIPAL CODE OF CHICAGO.

Sec. 28-1 Definitions

"Chauffeur" means the driver of a public passenger vehicle licensed by the city of Chicago as a public chauffeur. (1952, 1959, 1963.) (R. 21, 29, 35.)

"Person" means a natural person, firm or corporation in his own capacity and not in a representative capacity. (1951, 1959, 1963.) (R. 21, 29, 34.)

"Cabman" means a person engaged in business as proprietor of one or more taxicabs. (1951, 1959, 1963.) (R. 21, 29, 35.)

"Coachman" means a person engaged in business as proprietor of one or more terminal vehicles (1951), livery vehicles, sight-seeing vehicles or terminal vehicles. (1959, 1963.) (R. 21, 29, 35.)

"Terminal vehicle" means a public passenger vehicle which is used exclusively by a coachman under contract with railroad or steamship carriers for the transfer of their passengers and hand baggage en route in interstate travel between railroad terminals and steamship docks pursuant to through route published tariffs. (1959.) (R. 29, 46.)

Sec. 28-4. No vehicle shall be licensed as a public passenger vehicle until it has been inspected under the direction of the commissioner and found to be in safe operating condition and to have adequate body and seating facilities which are clean and in good repair for the comfort and convenience of passengers. (1952.) (R. 21.)

Sec. 28-4.1. No vehicle shall be licensed as a public passenger vehicle unles it has two doors on each side, and no vehicle having seating capacity for more than eight adult passengers shall be so licensed unless it has at least

two doors with fixed aisle space for access to said doors. (1959.) (R. 29.)

Sec. 28-5 Application. Applications for public passenger vehicle licenses shall be made in writing signed and sworn to by the applicant or, if applicant is a corporation, by its duly authorized agent, upon forms provided by the commissioner. . . . (1959.) (R. 30.)

Sec. 28-5.1 Qualifications. All corporate applicants for public passenger vehicle licenses shall be organized or qualified to do business under the law of Illinois and have their principal places of business in the city of Chicago. . . . (1959.) (R. 30.)

Sec. 28-6. Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. (1952.) If the commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed, and that the applicant is qualified to pursue the occupation of a cabman or coachman, the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued. (1959.) (R. 22, 29.)

Sec. 28-14. If any public passenger vehicle shall become unsafe for operation or if its body or seating facilities shall be so damaged, deteriorated or unclean as to render

said vehicle unfit for public use, the license therefor shall be suspended by the commissioner until the vehicle shall be made safe for operation. . . . (1951.) (R. 25.)

Sec. 28-30.1. Every cabman, *corporation* and affiliate shall keep and provide accurate books and records of account of his operations at his place of business in the city. On or before May 1 of each year every cabman, *corporation* and affiliate shall file with the Commissioner a profit and loss statement for the preceding calendar year, showing all his earnings and expenditures for operation, maintenance and repair of property, depreciation expense, premium paid for workmen's compensation and public liability insurance, and taxes paid for unemployment insurance and social security, and all state and local license fees, property taxes and Federal income taxes, and a balance sheet taken at the close of said year.

The Commissioner, or the authorized committee of the Council, shall have access to the property, books, contracts, accounts and records during normal business hours at said place of business, for such information as may be required for the effective administration and enforcement of the provisions of this chapter, or for the adoption of any ordinances, rules or regulations affecting taxicab operations.

In addition to the foregoing reports, each cabman shall within thirty days after the six months' period ended December 31 and within thirty days after the six months' period ended June 30 of each year file a sworn statement with the Commissioner showing his gross fares collected and his operating expenses for the six months immediately preceding said dates.

(Part not italicized added in 1959, R. 30. Words italicized added in 1963. R. 44.)

SECTION 202—INTERSTATE COMMERCE ACT 49 U. S. C. 302.

Sec. 202. [*August 9, 1935, amended September 18, 1940, May 16, 1942.*] *49 U. S. C. § 302.*] (a) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

(b) Nothing in this part shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

(c) Notwithstanding any provision of this section or of section 203, the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation and equipment, shall not apply—

(1) to transportation by motor vehicle by a carrier by railroad subject to part I, or by a water carrier subject to part III, or by a freight forwarder subject to part IV, incidental to transportation or service subject to such parts, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be and shall be regulated as transportation subject to part I when performed by such carrier by railroad, as transportation subject to part III when performed by such water carrier, and as transportation or service subject to part IV when performed by such freight forwarder;

(2) to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to part I, an express company subject to part I, a motor carrier subject to this part, a water carrier subject to part III, or a freight forwarder subject to part IV, in the performance within terminal areas of transfer, collection, or delivery service; but such transportation shall be considered to be performed by such carrier, express company, or freight forwarder as part of, and shall be regulated in the same manner as, the transportation by railroad, express, motor vehicle, or water, or the freight forwarder transportation or service, to which such services are incidental.

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SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 209

RAILROAD TRANSFER SERVICE, INC., A DELAWARE CORPORATION,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, NOT INDIVIDUALLY, BUT AS MAYOR OF THE CITY OF CHICAGO; RAYMOND F. SIMON, NOT INDIVIDUALLY, BUT AS CORPORATION COUNSEL OF THE CITY OF CHICAGO; ORLANDO WILSON, NOT INDIVIDUALLY, BUT AS SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO; AND JAMES CARTER, NOT INDIVIDUALLY, BUT AS PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION.

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THE SUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 1391.

RAILROAD TRANSFER SERVICE, INC., A DELAWARE CORPORATION,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, NOT INDIVIDUALLY, BUT AS MAYOR OF THE CITY OF CHICAGO; RAYMOND F. SIMON, NOT INDIVIDUALLY, BUT AS CORPORATION COUNSEL OF THE CITY OF CHICAGO; ORLANDO WILSON, NOT INDIVIDUALLY, BUT AS SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO; AND JAMES CARTER, NOT INDIVIDUALLY, BUT AS PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION.

OPINION BELOW.

The Opinion of the Court of Appeals is reported as *Railroad Transfer Service, Inc.* v. *City of Chicago*, 358 F. 2d 55 (1966).

QUESTION PRESENTED.

Did the District Court abuse its discretion in determining that no controversy existed within the meaning of the Declaratory Judgment Act, in regard to provisions of an ordinance which have not been applied to petitioner and which purport to impose reasonable safety regulations?

REASONS FOR DENYING THE PETITION.

I.

The petitioner, whose interstate business has in no way been impeded, cannot properly attack provisions of an ordinance which have not been applied to it.

The present action was one brought under the Declaratory Judgment Act, 28 U. S. C. A. § 2201 (App. p. 5). Both the District Court and the Court of Appeals found that there was no case or controversy as required by the Act. The District Court, in its opinion, stated (Rec. p. 5):

> "Thus far there is no indication that the City has taken or will take any action in the exercise of its police powers that would either interfere with interstate commerce or would violate the plaintiff's right to due process of law."

The Court of Appeals said (*Railroad Transfer Service, Inc.* v. *City of Chicago,* 358 F. 2d 55 (1966) at p. 59):

> "No actual controversy has been presented to the district court as required by 28 U. S. C. A. § 2201."

In *Lehon* v. *City of Atlanta,* 242 U. S. 53 (1916), this Court said (242 U. S. at p. 56):

> "To complain of a ruling one must be made the victim of it. One cannot invoke to defeat a law an apprehension of what might be done under it and, which if done, might not receive judicial approval."

In regard to an action brought under the Declaratory Judgment Act, 28 U. S. C. A. § 2201, this Court, in *Public Affairs Press* v. *Rickover,* 369 U. S. 111 (1961), stated (369 U. S. at p. 112):

> "The Declaratory Judgment Act was an authorization not a command. It gave the federal courts com-

petence to make a declaration of rights; it did not impose a duty to do so. Of course a District Court cannot decline to entertain such an action as a matter of whim or personal disinclination. 'A declaratory judgment like other forms of equitable relief, should be granted only as a matter of judicial discretion, exercised in the public interest.' *Eccles* v. *Peoples Bank,* 333 U. S. 426, 431."

On August 26, 1960, prior to the filing of this case, petitioner applied for and received licenses for its twenty vehicles for the year 1960 from the Public Vehicle License Commission of the City of Chicago (Rec. 140). At that time petitioner had complied with the requirements of the ordinance of the City of Chicago (Rec. 140). Since that time petitioner has, each year, deposited with the Clerk of the District Court its license fees (Rec. 140), and has carried on its terminal operation without interruption (Rec. 140).

When the City Council was in the process of setting up a schedule of fees for Public Passenger Vehicle Licenses, petitioner, on August 12, 1959, wrote to the Public Passenger Vehicle License Commissioner suggesting certain fees. The difference between the fees suggested by petitioner for the licensing of all twenty of its vehicles and the fees enacted by the Council is $460 per year (App. 65, 66). Since petitioner carries about 1,423,500 passengers per year, such difference amounts to an infinitesimal amount per passenger (Rec. 66).

It is not disputed that the City may exact a reasonable license fee for the use of its streets (Pet. p. 15). As this Court stated in *Chicago* v. *Atchison, T. & S. F. R. Co.,* 357 U. S. 77 (1958) at p. 88:

"Of course the City retains considerable authority to regulate how transfer vehicles shall be operated. It could hardly be denied, for example, that such vehicles

must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require registration of these vehicles and exact reasonable fees for their use of local streets."

The record in the case at bar does not indicate that anything more is being required of the petitioner than that it fill out the necessary application and pay the required license fee (Rec. 140).

The District Court made this point clear. The court, citing *Continental Baking* v. *Woodring*, 286 U. S. 352 (1932), said (Rec. pp. 142, 143):

> "There is no justiciable controversy, and the complaint is therefore premature. I reached this conclusion after carefully reading the case of *Continental Baking Co.* v. *Woodring*, 286 U. S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, which was cited by Judge Schnackenberg in *Atchison* at page 938. The Court in the *Woodring* case considered provisions of an ordinance which were at least as onerous as those set forth in the Chicago ordinance involved here, including the regulation that the vehicles there involved should be maintained in a 'safe and sanitary condition.' After first giving its approval to the requirements made by the ordinance, the Court in the *Woodring* case went on to say (at page 369):
>
> > 'In this respect as well as in relation to the other matters above-mentioned, appellants had no right to resort to equity merely because of an anticipation of improper or invalid action in administration. *Smith* v. *Cahoon* (283 U. S. 553, 563); *Dalton Adding Machine Co.* v. *State Corporation Comm.*, 236 U. S. 699, 700, 701.'
>
> "And so it seems to me in this case, that in raising the specter of possible arbitrary action on the part of the Commissioner, the plaintiff is complaining about having its interstate foot stepped on before the Commissioner has taken any important action beyond collecting the license fee to which the City is entitled."

The petitioner's cause of action is based on an apprehension, not a reality, and the District Court did not abuse its discretion in finding that there was no present controversy.

II.

Section 28-6 of the Municipal Code of Chicago is phrased in terms of permissible safety regulations which have not been applied to petitioner.

The petitioner's attempt to create controversy requires a strained interpretation of certain provisions of Chapter 28 of the Municipal Code of Chicago. These provisions, which have never been applied to petitioner, cannot be said to unambiguously impose unpermitted restraints on interstate commerce.

Petitioner's principal argument concerns itself with Section 28-6 of the Municipal Code of Chicago. This Section provides (Pet. p. 34):

> "Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the Commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed, and that the applicant is qualified to pursue the occupation of a cabman or coachman, the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued."

It is petitioner's position that after the decision in *Chicago* v. *Atchison, T. & S. F. R. Co.*, 357 U. S. 77 (1958), the City added a *new* requirement (Pet. p. 8) "that petitioner must prove *annually* to the Commissioner of licenses that it is 'qualified to pursue the occupation of a . . . coachman' before the license to transfer passengers between stations may be granted." According to petitioner (Pet. p. 9): "This clause is phrased strictly in terms of economic regulation that cannot be applied by the city to interstate commerce."

In 1958, when Chapter 28 of the Municipal Code of Chicago was before this Court, it read (Rec. p. 22):

> "Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition as provided in this chapter, the commissioner shall issue a public passenger vehicle license to the owner of the vehicle for the license period ending on the thirty-first day of December following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year."

A comparison of the provision as it existed in 1958 and as it was amended in 1959 indicates that in 1958 the Section read (Rec. p. 22): "If the commissioner shall find that the applicant is qualified." Whereas, in 1959, this provision read (Pet. p. 34): "If the commissioner shall find that the applicant is qualified to pursue the occupation

of a cabman or coachman." In addition, in 1958, a license was issued (Rec. p. 23) "for the license period ending on the thirty-first day of December following the date of its issuance . . ." Whereas, in 1959, a license was issued (Pet. p. 34) "to terminate on the 31st day of December following the date of issue . . ."

There is no substantial difference between the ordinance as it existed at the time of the *Atchison* decision and the ordinance as it existed in 1959. Contrary to petitioner's contention, there is nothing in either provision "phrased strictly in terms of economic regulation" (Pet. p. 9).

It is apparent that the requirements of the ordinance, which the City has not attempted to enforce against petitioner, are framed in keeping with permissible safety regulations. The ordinance requires that an applicant be a "law abiding citizen;" that he show financial ability, *only to the extent necessary to render "safe and comfortable service;"* and that he "maintain or replace equipment for such service and . . . pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period." These requirements concern themselves with safety and "accessible responsibility", and do not conflict with existing federal regulations. *Railroad Transfer Service, Inc.* v. *City of Chicago,* 358 F. 2d 55, 57 (1966).

As stated by Justice Harlan in his dissenting opinion in *Chicago* v. *Atchison, T. & S. F. R. Co.,* 357 U. S. 77 (1958) at p. 90:

> "In determining whether Chicago's ordinance should now be annulled it must be borne in mind that local authorities are not foreclosed from regulating matters of local concern merely because there may be some incidental, but not burdensome, effect on interstate commerce. At least since *Cooley* v. *Board of Wardens,*

12 How. 299 it has been recognized that because regulation of local incidents of interstate transportation is, as a practical matter, beyond the effective reach of Congress, there would frequently be an undesirable absence of needed regulation unless States and municipalities were free to act."

In the present case the petitioner contends that an ordinance which has not been applied to it, and which is framed in terms of general safety requirements, raises a controversy within the meaning of the Declaratory Judgment Act. The petitioner has not, and cannot, show that there has been an unpermitted interference with interstate commerce, because there has been none. Its strained interpretation of the ordinance was properly rejected by the District Court and the Court of Appeals. If 28-6 of the Municipal Code of Chicago was applied to the petitioner it would impose restrictions of "responsibility and safety" which have long been considered proper subjects for local legislation.

III.

Other challenged provisions of the ordinance do not impose unpermitted burdens on interstate commerce, and there is no controversy within the meaning of the Declaratory Judgment Act.

The petitioner complains of three other provisions of the ordinance. It argues (Pet. p. 14): "Likewise, petitioner, a Delaware Corporation authorized to do business in Illinois, cannot lawfully be compelled to maintain its principal place of business in Chicago." Contrary to this statement, prior to the filing of this suit the petitioner voluntarily established its principal place of business in Chicago (Rec. 7). Petitioner maintains its principal place of business in the City not because of any compulsion, but because the nature of that business is transporting railroad passengers and

baggage from one railway terminal in Chicago to another railway terminal in Chicago.

Petitioner alleged in its complaint (Rec. p. 5): "That it is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal place of business in the City of Chicago, Illinois." It does not allege that it wishes to maintain its principal place of business elsewhere. Surely no controversy is engendered by an ordinance requiring petitioner to do that which it is doing, especially where it has not expressed a desire to do anything else. This provision was held valid in *Evanston Cab Company* v. *City of Chicago*, 325 F. 2d 907 (7th Cir. 1963), certiorari denied 377 U. S. 943 (1964).

The petitioner argues (Pet. p. 14) that "[t]he restriction that only residents of Chicago may be employed as chauffeurs is obviously unreasonable and unrelated to traffic safety . . ." This provision is not contained in Chapter 28 of the Municipal Code of Chicago, which is the only Chapter that petitioner seeks to enjoin. The requirement that drivers of public vehicles be residents of Chicago was upheld in *City of Chicago* v. *Vokes*, 28 Ill. 2d 475 (1963), certiorari denied 377 U. S. 124 (1964).

Furthermore, there is no allegation that this requirement has in any way damaged petitioner or affected its ability to obtain competent drivers. Rather, petitioner's operation is conducted solely within the City of Chicago and a requirement that drivers reside in Chicago establishes, as the Court of Appeals pointed out, *Railroad Transfer Service, Inc. v. City of Chicago*, 358 F. 2d 55 (1966) at p. 58, "accessible responsibility."

Petitioner cites *Adams Express Co.* v. *New York*, 232 U. S. 14, 34 (1914), which it states (Pet. 14): "condemned a provision of an ordinance of the City of New York which had the practical effect of limiting drivers of express

wagons to residents of that City." In *Adams* the express company did a regular business with New Jersey and other cities outside of New York (232 U. S. at p. 28). Here petitioner's business is conducted solely within the City of Chicago.

The petitioner quotes from *Adams*, 232 U. S. at p. 34 (Pet. p. 14):

> "When . . . the obvious convenience of their being able to secure drivers in Jersey City as well as in New York, are considered, the provision would seem to be unnecessarily burdensome."

Petitioner fails to quote the next sentence of the opinion (232 U. S. at p. 34):

> "We are not called upon, however, to decide this point."

At a time when each year traffic accidents kill thousands of people and inflict millions of dollars worth of personal injury and property damage, to require "accessible responsibility" of drivers who operate solely within Chicago is not unrelated to traffic safety.

Finally, the petitioner argues (Pet. p. 13) that "[t]he City may not impose the requirement that petitioner shall file annually with the City a detailed statement of its expenses and earnings, and its balance sheet, and afford the City access to its books." This issue was not raised in the Complaint (Rec. 5), was not argued before the District Court (Rec. 13), or the Court of Appeals, 358 F. 2d 55 (1966). It is not properly before this Court on a petition for a writ of certiorari. There is nothing in the record to indicate that petitioner has been asked to comply with any such provision.

The petitioner's reliance (Pet. p. 14) on *Castle* v. *Hayes Freight Lines, Inc.*, 348 U. S. 61 (1954) and *Bibb* v. *Navajo*

Freight Lines, Inc., 359 U. S. 520 (1959), is misplaced. *Castle* v. *Hayes Freight Lines* dealt with a statute preventing interstate motor carriers from using Illinois highways because of repeated overweight violations. None of the City of Chicago's ordinances prevent Transfer from using the City's streets.

The *Bibb* case involved a statute of Illinois which required a type of mudguard for interstate carriers that differed from the conventional mudguard. The conventional mudguard was accepted in 45 States and was mandatory in Arkansas. This Court found that there was a compelling need for national uniformity so that interstate carriers would not be required to change equipment as they crossed state lines. Petitioner's vehicles do not cross state lines and are not subjected to conflicting regulations.

This Court, in *Bibb*, did point out, 359 U. S. at p. 524:

> "These safety measures carry a strong presumption of validity when challenged in Court. If there are alternate ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid state objective. Policy decisions are for the state legislature absent federal entry into the field. Unless we can conclude on the whole record that 'the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interference which seriously impede it' (*Southern Pacific* v. *Arizona, supra*, pp. 775-776) we must uphold the statute."

Recognizing the presumption of validity in favor of the ordinance, it would be contrary to the policy of this Court, and the meaning of the Declaratory Judgment Act, to allow a cause of action under the Act in order to test the validity of provisions of an ordinance which have not been applied to the petitioner, and which in no way have interfered with its business.

The Court of Appeals summed up the issues of this case as follows (*Railroad Transfer Service, Inc.* v. *City of Chicago*, 358 F. 2d 55 (1966), at pp. 58, 59):

"Transfer has not pleaded any injury and consequently has not shown any burden on interstate commerce. Transfer's apprehensions do not generate an actual controversy. If the ordinance is applied beyond constitutional limits, Transfer will have its appropriate remedy. *Continental Baking Co.* v. *Woodring, supra*.[286 U. S. 352 (1932)].

* * * * *

"In sum, prior to the commencement of this action in 1960, Transfer complied with the provisions of the ordinance in question by making the necessary application for its Chicago vehicle licenses and paid the required fee of $1,630 for the year 1960. Thereafter, it paid into court the required license fees for 1961, 1962, and 1963.

"Since the filing of this action, Transfer has carried on its terminal transfer operation without interruption or interference by Chicago or any of the individual defendants.

"Chicago's authority to assess and collect its annual vehicle license fee has been established and the amount in question here is reasonable.

"Chicago concedes that it now has no right to prevent the operation of Transfer's business.

"Transfer operates wholly within the city limits of Chicago, has a complete monopoly and is without competition, except by licensed taxicabs.

"The ordinance provisions concerning safety, comfort, drivers, color of vehicles and financial responsibility reasonably relate to welfare and safety and are clearly within the local police powers of Chicago and do not burden interstate commerce or conflict with federal regulatory powers.

"There is no claim that the Commissioner or anyone else has issued any orders, rules or regulations in any way discriminating against Transfer.

"There is no claim that Chicago or anyone else has

applied the requirements of the ordinance in any manner to the detriment or harm of Transfer.

"There is no claim that Chicago or anyone else has acted under the ordinance in any manner to deny Transfer due process.

"Transfer's fears and apprehensions of what may happen to it under the ordinance have not been translated into realities.

"No actual controversy has been presented to the district court as required by 28 U. S. C. A. § 2201."

As pointed out by the Court of Appeals, the City recognizes that it cannot prevent the operation of interstate business, although it does have the authority to assess reasonable vehicle license fees and require compliance with safety regulations. As also pointed out by the Court of Appeals, petitioner has not pleaded any injury and has been conducting "its terminal transfer operation without interruption or interference by Chicago or any of the individual defendants." No actual controversy has been presented to the District Court as required by the Declaratory Judgment Act, and the petition should be denied.

CONCLUSION.

Petitioner has failed to show that a controversy exists within the meaning of the Declaratory Judgment Act. If the challenged provisions were applied to petitioner they would impose permissible safety regulations.

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 209

RAILROAD TRANSFER SERVICE, INC.,
A Delaware Corporation,
Petitioner,

vs.

THE CITY OF CHICAGO,
A Municipal Corporation, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MOTION OF CHICAGO TERMINAL RAILROADS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITIONER.

The railroads named below[1] present this motion for leave to file the accompanying brief as *amicus curiae* in support of petitioner.

1. The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Chicago & Eastern Illinois Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago, Rock Island and Pacific Railroad Company; Chicago South Shore and South Bend Railroad; Erie-Lackawanna Railroad Company; Canadian National Railway Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Monon Railroad; The New York Central Railroad Company; Norfolk and Western Railway Company; and The Pennsylvania Railroad Company.

INTEREST OF THE RAILROADS

Every day thousands of railroad passengers, traveling through Chicago on interstate journeys, must be transferred from their incoming railroad station to a different outgoing railroad station. Petitioner performs this transfer service in specially designed buses under a written contract with the named railroads. The passenger receives a coupon good for the transfer with his through ticket, and makes no payment to petitioner for the service. Petitioner receives its entire compensation from the railroads. This service was described in *Chicago* v. *Atchison, Topeka & Santa Fe Railway Company*, 357 U. S. 77, 78-79 (1958). The arrangements between petitioner and the railroads are specifically authorized by § 202(c)(2) of the Interstate Commerce Act, 49 U. S. C. & 302(c)(2), and the transfer is authorized, and may in proper cases be required, by that section and by §§ 1(4) and 3(4) of the Act, 49 U. S. C. §§ 1(4), 3(4). *Atchison*, at 84-87.

In the case at bar petitioner seeks to restrain the enforcement of an ordinance of the City of Chicago which would authorize the City in its discretion to refuse to permit petitioner to perform the service and would impose other unlawful regulation upon petitioner's performance of the service. The ordinance would, in effect, give the City the right to select the transfer agent. A similar ordinance was held invalid in *Atchison*.

REASONS FOR FILING BRIEF AS AMICUS CURIAE

The railroads, speaking for themselves, wish to make clear the fact, which otherwise may not adequately be presented, that they support the position of petitioner in this cause in all respects, and that they have the same interest as petitioner in seeking to reverse the judgment of the Court of Appeals. This fact is relevant and important

since the proper interests of petitioner and the railroads in the performance of the transfer service must necessarily be mutual.

The railroads wish to show that they agree with the conclusions of law advanced in petitioner's brief. No party can assert the railroads' position.

The railroads wish to show briefly, through citation of authorities, the wide application of § 202(c) in railroad operations throughout the country, largely in freight service. The railroads believe that these authorities will not be presented by the parties and that they should be considered by the Court in determining the issue of the conflict of the Interstate Commerce Act with the Chicago ordinance.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 209

RAILROAD TRANSFER SERVICE, INC., A DELAWARE CORPORATION,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, NOT INDIVIDUALLY, BUT AS MAYOR OF THE CITY OF CHICAGO; RAYMOND F. SIMON, NOT INDIVIDUALLY, BUT AS CORPORATION COUNSEL OF THE CITY OF CHICAGO; ORLANDO WILSON, NOT INDIVIDUALLY, BUT AS SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO; AND JAMES CARTER, NOT INDIVIDUALLY, BUT AS PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONER'S BRIEF.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 209.

RAILROAD TRANSFER SERVICE, INC., A DELAWARE CORPORATION,

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vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, NOT INDIVIDUALLY, BUT AS MAYOR OF THE CITY OF CHICAGO; RAYMOND F. SIMON, NOT INDIVIDUALLY, BUT AS CORPORATION COUNSEL OF THE CITY OF CHICAGO; ORLANDO WILSON, NOT INDIVIDUALLY, BUT AS SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO; AND JAMES CARTER, NOT INDIVIDUALLY, BUT AS PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONER'S BRIEF.

OPINIONS BELOW.

The opinion of the Court of Appeals here under review (R. 148) and the dissenting opinion (R. 155) are reported in 358 F. 2d 55, 59. The Court of Appeals affirmed a judg-

ment of the United States District Court for the Northern District of Illinois.

There were two opinions by the District Court and one earlier opinion by the Court of Appeals. The first District Court opinion (R. 132), granting respondents' motion to dismiss the complaint, is not reported. The Court of Appeals vacated this judgment on the ground that, unknown to the District Court, the ordinance in issue had been amended in 1963 during the litigation and before the judgment was entered. 334 F. 2d 991, 993 (1964), Appendix A hereto. The remand called for consideration of the effect of the amendment. The District Court's second opinion (R. 141), granting respondents' motion to dismiss petitioner's second amended complaint, is not reported.

JURISDICTION.

Jurisdiction is conferred upon this Court to review the judgment of the Court of Appeals by certiorari by 28 U. S. C. § 1254(1), 62 Stat. 928. Certiorari was granted October 10, 1966. The judgment of the Court of Appeals was entered March 10, 1966, and petition for certiorari was filed June 6, 1966. Jurisdiction of the District Court rests upon 28 U. S. C. § 1337, 62 Stat. 931, because the action arises under provisions of the Interstate Commerce Act.

STATUTES INVOLVED.

This cause involves the conflict of provisions of Chapter 28 of the Municipal Code of Chicago with the Commerce Clause of the Constitution and parts of the Interstate Commerce Act.

Chapter 28 of the Municipal Code of Chicago, with amendments since 1955, is printed in full in the Record, pp. 19-46. Pertinent provisions are set forth in Appendix B hereto.

Sections 1(4), 3(4) and 202(c) of the Interstate Commerce Act, 49 U. S. C. §§ 1(4), 3(4), 302(c); 54 Stat. 900, 903; 56 Stat. 300, are printed in Appendix C hereto.

The Commerce Clause of the Constitution, Art. I, Sec. 8, Cl. 3: "The Congress shall have Power . . . To regulate Commerce . . . among the several States. . . ."

QUESTIONS PRESENTED FOR REVIEW.

1.

Whether petitioner, a motor carrier engaged by contract with Chicago railroads in tranferring interstate passengers between railroad stations in Chicago under authority of the Interstate Commerce Act, and receiving its entire compensation from the railroads, may be compelled by a Chicago ordinance to file *annually* an application for authority to perform the transfer service where granting the application is conditioned upon—

a. A finding by a City official after investigation "that the applicant is qualified to pursue the occupation of a . . . coachman," the word "coachman" including petitioner by definition, and the word "qualified" being by context not related to traffic safety;

b. Total compliance with the requirements of the ordinance.

2.

Whether Chicago may by the ordinance compel petitioner—

a. To file annually with the City a comprehensive and detailed statement of its expenses and earnings in performing its transfer contract, and its balance sheet;

b. To afford City officials access to its business and financial books and records;

c. To employ only residents of Chicago as drivers of its vehicles;

d. To maintain its principal place of business in Chicago.

3.

Whether the instant action for a declaratory judgment that the contested provisions of the ordinance are invalid, and for an injunction against their enforcement, is appropriate and not premature.

STATEMENT OF THE CASE.

This action has its roots in the events that led to *Chicago v. Atchison, Topeka and Santa Fe Ry. Co.*, 357 U. S. 77 (1958). For many years before 1955 the Chicago railroads employed Parmelee Transportation Company to carry passengers traveling through Chicago from their incoming to their outgoing railroad stations. During this period, a licensing ordinance that regulated various classes of "public passenger vehicles" included and defined a "terminal vehicle" as one that is operated under contracts with railroads exclusively for the transfer of railroad passengers between terminal stations. In June, 1955, the railroads advised Parmelee that, effective October 1, 1955, they would discontinue their arrangements with Parmelee and would engage petitioner to perform the transfer service. In July, 1955, the Chicago City Council amended the ordinance so as to: (1) eliminate the contract requirement from the definition of terminal vehicle; (2) grant Parmelee automatically renewable terminal vehicle licenses in perpetuity for all of its vehicles and for replacement of existing vehicles; and (3) compel any new applicant for a terminal vehicle license to prove to the City Public Vehicle License Commissioner that the new service was required by the public convenience and necessity. See

357 U. S. at 79-81. This Court on June 16, 1958, held the amendment invalid because in conflict with the Interstate Commerce Act. *Id.* at 85. Petitioner has continued to perform the interstation transfer service ever since October 1, 1955.

The Court described the transfer service as follows:

> "Chicago is one of the Nation's great rail centers. Each day thousands of railroad passengers travel through that city on continuous journeys from one State to another. Since the lines of all railroads which carry passengers into and out of Chicago come to an end in one of that city's eight terminals, through passengers frequently arrive at a station different from the one where they are to board their outgoing train and must transfer with their baggage in order to continue their trip. Because of the serious problems of scheduling and passenger convenience involved in this interchange, the railroads, as a group, have long provided for the transfer of through passengers from one station to another by a systematic and highly organized motor carrier operation. Generally the passengers receive a coupon covering this transfer service, without special charge, as part of their through ticket." (357 U. S. at 79.)

Soon after the decision in *Atchison,* beginning in 1959, the Chicago City Council renewed its harassment of petitioner by various amendments to the public passenger vehicle ordinance. The amendments repealed the requirement of proof of public convenience and necessity, but by new sections and additions to old sections they created new economic regulation of terminal vehicles aimed squarely at petitioner.

In 1959, an amendment to § 28-6 added to the ordinance as a condition to issuance of an *annual* license the requirement that the Commissioner "shall find that the applicant is qualified to pursue the occupation of a cabman or coachman" (App. B, R. 27). The definition of coachman in-

cludes the operator of terminal vehicles (App. B, R. 27). This amendment is not related in context to traffic safety; instead it implements or is implemented by other post-1958 amendments providing economic regulation.

An amendment added in 1959, § 28-5.1 (App. B, R. 28) requires that all "corporate applicants for public passenger vehicle licenses shall . . . have their principal places of business in the City of Chicago."

In 1963 a section theretofore applicable only to taxicab operators, § 28-30.1, was amended so as to cover "every . . . corporation", thus bringing petitioner within its terms. This section (App. B, R. 43) provides that every corporation shall keep accurate books of account at its Chicago office and shall annually on or before May 1 file with the Commissioner a profit and loss statement for the preceding calendar year showing in great detail its earnings and expenses, and its balance sheet at the end of the year. The Commissioner is granted access to the corporation's records "during normal business hours." As we have noted above, the first opinion of the Court of Appeals, 334 F. 2d 991, App. A, remanding to the District Court, called for consideration of the 1963 amendments.

The definition of "chauffeur" in § 28-1 of the ordinance (App. B, R. 19) requires the construction that drivers of petitioner's vehicles must be residents of Chicago.

The 1959 amendments were made effective on January 1, 1960 (R. 30, Sec. 7). On August 19, 1960, the Public Vehicle License Commissioner demanded that petitioner immediately make application for licenses and comply with the ordinance (R. 66, 125). On August 26, 1960, petitioner made application for licenses for its vehicles and tendered the required fees, under protest, in order to protect its right to seek judicial relief (R. 125). The City refused to accept an application with a protest and advised that unless

the protest was withdrawn petitioner's vehicles would not be permitted to operate (R. 125). Thereupon petitioner, conceiving itself faced with an emergency, paid the 1960 license fees and partially complied with the ordinance in other respects (R. 126).

On September 23, 1960, petitioner commenced the instant action by filing its complaint in the District Court for declaratory judgment that the ordinance is in conflict with the Interstate Commerce Act and the Commerce Clause (R. 2). The case eventually went to final hearing on petitioner's second amended complaint for declaratory judgment and injunction filed September 29, 1964 (R. 5-49) and affidavit (R. 125), and respondents' motion to dismiss (R. 49-66) and affidavit (R. 66-124).

License fees accruing annually after 1960 were deposited by petitioner with the clerk of the District Court to be held pending final disposition of the case (R. 68-69, 139-140).

SUMMARY OF ARGUMENT.

I.

The amendments of 1959 and 1963 to Chapter 28 of the Municipal Code of Chicago are invalid on their face under the Interstate Commerce Act and the Commerce Clause of the Constitution. The contrary holding of the Court of Appeals conflicts with *Chicago* v. *Atchison, Topeka & Santa Fe Railway Company*, 357 U. S. 77 (1958), and other decisions of this Court.

A. The requirement of § 28-6 that petitioner must prove *annually* to the City's satisfaction that it is "qualified to pursue the occupation of" transferring interstate passengers between railroad stations, as a fixed condition to the right to perform the service, conflicts with §§ 1(4), 3(4), and 202(c)(2) of the Interstate Commerce Act, 49 U. S. C. §§ 1(4), 3(4), 302(c)(2). These sections confer on the railroads the exclusive right to select a transfer agent of their own choosing free from any interference by the City. Whether an agent is "qualified to pursue the occupation of" transferring passengers between stations is the sole concern of the railroads, not the City. By § 202(c)(2) Congress has expressed its policy that railroads are competent to select agents who are "qualified to pursue the occupation of" performing the transfer service, unhindered by local authorities.

This clause of § 28-6 was enacted at the same time that the City Council repealed the requirement for proof of public convenience and necessity that was declared invalid in *Atchison*. The history of this clause and its structure within § 28-6 show that it was intended by a hostile City Council as a further harassment of petitioner. If the City

had wished in good faith to conform to the mandate of *Atchison* and limit its regulation of petitioner to simple licensing and lawful police regulations it easily could have done so, instead of arrogating to itself every year the right to determine whether petitioner is "qualified to pursue the occupation of" transferring passengers. This clause is clearly set forth in § 28-6 as a requirement that is entirely separated from and independent of ordinary licensing and safety provisions. It is, as it shows on its face, a restrictive regulation of an occupation of engaging in interstate commerce that has been specifically authorized by Congress.

Where, as here, Federal legislation has granted a specific right to engage in interstate commerce, this Court has steadfastly held invalid on its face, for more than one hundred and forty years, every form of state or local enactment that has asserted power to determine whether that right shall be enjoyed.

B. The requirements of Ch. 28 that petitioner shall file extensive financial reports with the Public Vehicle License Commissioner, shall give the Commissioner access to its books and records, shall have its principal place of business in Chicago, and shall employ only residents of Chicago as chauffeurs, are invalid under the Interstate Commerce Act and the Commerce Clause because they are wholly unrelated to any lawful regulation that may be exerted against petitioner under the police power. All but the last of these were enacted as amendments to Ch. 28 in 1959 and 1963, and the form of their enactment shows that they were aimed squarely at petitioner.

Filing extensive financial reports and allowing the Commissioner to inspect petitioner's books has no conceivable relation to any form of regulation that can lawfully be asserted by the City over the interstation transfer operation. Petitioner was brought within the scope of this requirement by an amendment making petitioner subject to a

section which theretofore regulated only taxicab companies. This, along with the provision of § 28-6 discussed above, evidenced the City's intention to treat the interstation transfer service as if it were intrastate commerce.

Petitioner, a Delaware corporation authorized to do business in Illinois, cannot lawfully be compelled to maintain its principal place of business in Chicago. Since a corporation may have only one principal place of business, this provision would impose an intolerable burden upon petitioner and other interstate carriers. This requirement has nothing to do with reasonable requirements for the maintenance of registered agents, local offices, and posting of sufficient insurance coverage. Again, the form of the enactment is harassment and not reasonable regulation.

Requiring that petitioner's drivers be residents of Chicago is a wholly unnecessary burden that limits petitioner's employing potential. Whatever reasons there may be for applying this restriction to roving taxicab drivers do not exist as to the limited interstation transfer operation that is performed by petitioner as agent for the railroads.

II.

The instant action is appropriate and is not premature, and the contrary holding of the Court of Appeals is in conflict with decisions of this Court. The ordinance is invalid on its face and the City has advised petitioner that unless petitioner complies with all of its terms petitioner will be denied the use of the streets. In these circumstances petitioner need not apply for a license but can request the judicial relief here sought. To compel petitioner to file annually an application which, by the express terms of § 28-6, the City reserves the right to deny, is of itself a violation of petitioner's rights under the Interstate Commerce Act and the Commerce Clause.

Petitioner has the responsibility of transferring thousands of passengers between the railroad stations every day, and it must maintain a fleet of specialized motor vehicles and a highly experienced staff. It cannot be subjected to the uncertainty every year as to whether a city official, representing an obviously hostile City Council, is going to certify that it is "qualified to pursue the occupation of" transferring passengers.

The terms of the ordinance are proof of the City's hostility to petitioner, and this obvious hostility furnishes ground for the relief that petitioner seeks. The City has expressed its will and policy in the ordinance. Neither counsel for the City nor any other of its representatives can be heard to say that the ordinance will not be enforced according to its terms. As long as the ordinance remains in effect petitioner is in constant danger of stoppage of its operations and cumulative criminal penalties.

ARGUMENT.

I.

THE AMENDMENTS OF 1959 AND 1963 TO CHAPTER 28 OF THE MUNICIPAL CODE OF CHICAGO ARE INVALID ON THEIR FACE UNDER THE INTERSTATE COMMERCE ACT AND THE COMMERCE CLAUSE OF THE CONSTITUTION. THE CONTRARY HOLDING OF THE COURT OF APPEALS CONFLICTS WITH CHICAGO v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, 357 U. S. 77, AND OTHER DECISIONS OF THIS COURT.

A. In Respect to the Requirement That Petitioner Must Establish Annually to the City's Satisfaction That It Is "Qualified to Pursue the Occupation of a . . . Coachman" in Order to Obtain the Right to Operate.

The Court of Appeals concluded that Chapter 28 is not in any part invalid on its face: "As written, however, the ordinance does not collide with federal preemption. . . . [T]he ordinance is not offensive on its face. . . ." 358 F. 2d at 57 (R. 151, 152). This holding conflicts with *Chicago* v. *Atchison, Topeka & Santa Fe Railway Company*, 357 U. S. 77 (1958), and other decisions of this Court. The requirement that petitioner must prove annually to the satisfaction of the City Public Vehicle License Commissioner that it "is qualified to pursue the occupation of a . . . coachman" as a fixed condition to the right to perform the interstation transfer service, unlawfully invades a field preempted from state regulation by §§ 1(4), 3(4), and 202(c)(2) of the Interstate Commerce Act, 49 U. S. C. §§ 1(4), 3(4), 302(c)(2), 54 Stat. 900, 903, 56 Stat. 300. *Atchison*, 357 U. S. at 84-87.

In *Atchison* the Court made a detailed analysis to show

that these sections of the Act superseded the provisions of the Chicago ordinance that would require, from a carrier engaged by the railroads to perform the interstation transfer service, proof that the carrier's service was required by the public convenience and necessity. The Court actually made two holdings. It decided that by force of these sections the City could not exercise any veto power over the performance of the service. More important perhaps, it also held that § 202(c)(2) authorized the railroads to select an agent *of their own choosing* to perform interstation transfer free from any interference by the City. (357 U. S. at 85-88.) "We believe the Act authorizes the railroads to engage in this transfer operation themselves or to select such agents as they see fit for that purpose without leave from local authorities." (p. 87.)

The crucial issue was whether the City or the railroads should have the power to select the transfer agent. Under the ordinance, "Parmelee was permitted to continue operating without leave from the City since an exception in § 28-31.1 provided that no certificate was necessary for the renewal of an existing license" (p. 81); but a new applicant had to prove that public convenience and necessity required his operation (p. 80). Thus the ordinance gave that power exclusively to the City. The Court went to some length to point out why that provision was in conflict with the Act and why under the Act the selecting power must belong exclusively to the railroads without any restraint by the City. The Court said in part:

> "National rather than local control of interstate railroad transportation has long been the policy of Congress. It is not at all extraordinary that Congress should extend freedom from local restraints to the movement of interstate traffic between railroad terminals. Serious impediments to the efficient and uninterrupted flow of this traffic might well result if the City could deny the railroads the right to transfer

passengers by their own vehicles or by those of their selected agents. For example, the railroads here undoubtedly have a better understanding of how to handle the transportation problems involved in expeditiously moving thousands of passengers from station to station each day than do local officials. Because of close time schedules, the great volume of traffic and its irregular ebb and flow, the railroads obviously need a cooperative and dependable transfer operator with suitable equipment who is willing to work in close harmony with them. The railroads have rejected as unsuitable the only transfer service now licensed to operate by the City. If local officials can prevent them from providing this service by some other means a breakdown in the organized transfer of passengers could result. At a minimum they would be forced to deal again with the rejected operator." (pp. 87-88.)

It is plain from this language that the railroads have the exclusive right to decide whether their selected transfer agent is "qualified to pursue the occupation of" transferring passengers, that their decision is not subject to review by the City, and that the City has no right whatsoever to exercise any examining or selective power in this respect. Congress by § 202(c)(2) has extended "freedom from local restraints to the movement of interstate traffic between railroad terminals" (pp. 87-88), and has thereby expressed its policy that the railroads are competent to select agents who are "qualified to pursue the occupation" of performing the transfer service, unhindered by local authorities.

Nevertheless, the City now asserts by the ordinance in issue that it has the power every year to require that petitioner must establish to the City's satisfaction that petition is "qualified to pursue the occupation of" transferring passengers before it may continue to operate.

After the decision in *Atchison*, holding invalid the re-

quirement that petitioner must obtain a certificate of public convenience and necessity in order to perform the interstation transfer service, the City amended the ordinance. The City repealed (R. 30, Sec. 6) the public convenience and necessity section struck down by this Court (Sec. 28-31.1; 357 U. S. at 80) but at the same time amended § 28-6 in the same ordinance by adding a new requirement that petitioner must prove *annually* to the License Commissioner that it is "qualified to pursue the occupation of a . . . coachman" before the license to transfer passengers between stations may be granted.

Thus, in 1958, at the time of the decision in *Atchison*, § 28-6 of the ordinance was the following (R. 20-21):

> "Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition as provided in this chapter, the commissioner shall issue a public passenger vehicle license to the owner of the vehicle for the license period ending on the thirty-first day of December following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year. [Passed. Coun. J. 12-20-51. p. 1596: amend. 4-16-52. p. 2178.]"

In 1959, as stated above, the City amended § 28-6 by striking out the last sentence and substituting therefor the following (R. 27, Sec. 2):

> "If the commissioner shall find that the application, and all other statements and documents required to be

> filed with said application have been properly executed *and that the applicant is qualified to pursue the occupation of a cabman or coachman,* the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued." (Emphasis supplied.)

It is plain that the amendment added nothing to § 28-6, or to any other section, that pertained to safety of operation and equipment. But it did add the requirement that the Commissioner is to consider *each year* whether "the applicant is *qualified to pursue the occupation* of a cabman or coachman." This clause is phrased strictly in terms of economic regulation that cannot be applied by the city to interstate commerce. On its face this clause arrogates to the City the power to exercise judgment as to whether or not the agent chosen by the railroads should be allowed to perform the transfer service. The City is here, as in *Atchison,* claiming "at least some power . . . to decide whether a motor carrier may transport passengers from one station to another." 357 U. S. at 85.

It is to be particularly noted that the 1959 amendment to § 28-6 was so drawn as to set out the clause, "qualified to pursue the occupation of a . . . coachman," as a complete requirement wholly independent of the other provisions of the section, or of the ordinance, that could be the subject of legitimate local concern such as traffic regulation. In terms and intent this clause sets up a separate and independent power of economic regulation. A brief analysis will make this clear. The first clause of the amendment is:

> "If the commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed"

That is complete. Then follows:

> "*and* that the applicant is qualified to pursue the occupation of a cabman or coachman," (Emphasis supplied).

That is complete. It has no relation to any other requirement of the ordinance, either preceding or following it. Then follows:

> "the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, *providing that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued.*" (Emphasis supplied).

The last emphasized clause calls for a finding by the commissioner that is entirely apart from and unrelated to whether "applicant is qualified to pursue the occupation of a . . . coachman."

In *Adams Express Co.* v. *New York*, 232 U. S. 14 (1914), the Court made a similar analysis of a New York ordinance, and concluded that it imposed regulation upon local deliveries by express vehicles that conflicted with the provisions of the Interstate Commerce Act (34 Stat. 584, 49 U. S. C. § 1(3)(a)) regulating express companies, saying in part:

> 'The requirements of §§ 305 and 306 . . . cannot . . . be considered as a regulation in the interest of safety in street traffic. Other ordinances provide for the 'rules of the road' to which wagons of express companies, as well as those of other persons, are subject. . . . The sections now under consideration constitute a regulation of the express 'business.' Article I is entitled, 'Business Requiring a License;' § 305, containing the enumeration, provides that 'the following businesses must be duly licensed;' and § 306, that 'no person shall engage in or carry on any such business without a license therefor. . . .' [W]hile such a requirement may be proper in the case of local or intrastate busi-

ness, it cannot be justified as a prerequisite to the conduct of the business that is interstate. . . . [I]n the present instance, Congress has exercised its authority and has provided its own scheme of regulation in order to secure the discharge of the public obligations that the business involves." 232 U. S. at 31-32.

In the case at bar petitioner is confronted with a more burdensome obligation in seeking the right to engage in interstate commerce than was imposed in *Adams Express*. There the city retained no discretion to deny the right. Moreover, the amendment to § 28-6 imposes a more onerous burden than the proof of public convenience and necessity requirement of former § 28-31.1 involved in *Atchison*. Public convenience and necessity had to be established only once; annual renewals of licenses could be had without proof of public convenience and necessity. 357 U. S. at 80, n. 1. But the amendment to § 28-6 requires petitioner to prove *every year* to the satisfaction of the Public Vehicle License Commissioner that it is "qualified to pursue the occupation of" engaging in interstate commerce that is authorized by §§ 1(4), 3(4), and 202(c)(2) of the Interstate Commerce Act.

The setting in which this amendment was enacted emphasizes its meaning. Having been defeated in its effort to compel petitioner to prove public convenience and necessity, the City in an obvious and blatant effort to avoid the clear meaning of this Court's decision merely substituted therefor the requirement that petitioner prove that it is qualified before a license is issued.

Whether petitioner is qualified to operate as a carrier in interstate commerce transferring passengers between railroad stations under a contract with the railroads, pursuant to provisions of the Interstate Commerce Act, is the concern of the railroads and the Interstate Commerce Commission, not of the City of Chicago. Indeed, this Court has

already stated in crystal clear language: "The Act authorizes the railroads to engage in this transfer operation themselves or to select such agents as they see fit for that purpose without leave from local authorities." *Atchison*, 357 U. S. at 87.

In *Atchison* the Court said in respect to the public convenience and necessity requirement:

> "Although counsel for the City denies that it will use this power to exclude proposed transfer operations wholly or primarily because of economic considerations . . . it is clear that the City claims *at least some power* under § 28-31.1 to decide whether a motor carrier may transport passengers from one station to another." 357 U. S. at 85. (Emphasis added.)

Later in the opinion the Court pointed out:

> "Of course the City retains considerable authority to regulate how Transfer's vehicles shall be operated. It could hardly be denied, for example, that such vehicles must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require registration of those vehicles and exact reasonable fees for their use of the local streets." (p. 88.)

The City has not complied with the mandate of this Court to restrict its regulation to general safety matters and the exaction of reasonable fees for the use of its streets. Instead, it has continued to claim "at least some power" to determine whether petitioner has a right to operate even if it complies with general safety regulations and pays its license fees.[1] Once again, therefore, petitioner is required to seek relief from this Court.

Harman v. *Forssenius*, 380 U. S. 528 (1965), presents a

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1. We are not aware of any ground for the statement of the Court of Appeals, 358 F. 2d at 57, footnote 2, that "Chicago now admits that it has no power to stop Transfer's operations in interstate commerce."

similar case of die-hard effort to impair Constitutional rights. A state law required a voter who did not pay the outlawed poll tax to file in every election year a form which amounted to an application for the right to vote. Terming this a "cumbersome procedure" (pp. 541-542) designed to circumvent rights granted by the Twenty-fourth Amendment, the Court held it invalid. Similarly, a requirement that petitioner shall *every year* prove to the satisfaction of the City that it is "qualified to pursue the occupation" of transferring passengers, is a "cumbersome procedure" that violates petitioner's rights under the Commerce Clause and the Interstate Commerce Act. Paraphrasing the Court's opinion (pp. 540-541): The Commerce Clause, like the Twenty-fourth Amendment, "nullifies sophisticated as well as simple-minded modes of impairing the right granted. . . . It hits onerous procedural requirements which effectively handicap exercise of" Federally granted rights (380 U. S. at 540-541).

The Court's holdings in *Atchison,* 357 U. S. 77, and *Adams Express,* 232 U. S. 14, are far from being isolated expressions. Where, as here, Federal legislation has granted a specific right to engage in interstate commerce, the Court has steadfastly held invalid on its face every form of state or local enactment that has asserted power to determine whether that right shall be enjoyed. *Gibbons* v. *Ogden,* 9 Wheat. 1 (1824); *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.,* 96 U. S. 1 (1878); *Bowman* v. *Chicago & North Western Railway Co.,* 125 U. S. 465, 484 (1888); *Western Union Telegraph Co.* v. *Attorney General,* 125 U. S. 530, 554 (1888); *Harman* v. *Chicago,* 147 U. S. 396, 406-407 (1893); *Castle* v. *Hayes Freight Lines, Inc.,* 348 U. S. 61, 65 (1954). Cf. *Public Utilities Commission of California* v. *United States,* 355 U. S. 534, 540 (1958). The case at bar simply calls for continued application of that rule.

B. In Respect to Requirements That Petitioner Shall File Financial Statements With the Commissioner, Shall Employ Only Chicago Residents as Chauffeurs, and Shall Have Its Principal Place of Business in Chicago.

The Court of Appeals summarized part of its holding as follows:

> "While the ultimate aim of the Chicago ordinance is not clear, the ordinance does have an apparent relation to responsibility. To require Transfer to maintain its office in Chicago, to have its drivers reside in Chicago, and to give proof of financial responsibility is but to establish accessible responsibility. Such requirements are reasonably within police powers of promotion of welfare."[2] (358 F. 2d at 58, R. 153.)

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2. The involved provisions of Chapter 28, Municipal Code of Chicago, are the following:

Sec. 28-5.1 *Qualifications.*) All corporate applicants for public passenger vehicle licenses shall be organized or qualified to do business under the laws of Illinois and have their principal places of business in the city of Chicago . . . [Passed August 24, 1959.] (R. 28.)

Sec. 28-1 *Definitions.*) "Chauffeur" means the driver of a public passenger vehicle licensed by the city of Chicago as a public chauffeur. [Passed 1951.] (R. 27.)

Sec. 28-30.1 *Books and Records.*) Every cabman, *corporation* and affiliate shall keep and provide accurate books and records of account of his operations at his place of business in the city. On or before May 1 of each year, every cabman, *corporation* and affiliate shall file with the Commissioner a profit and loss statement for the preceding calendar year, showing all his earnings and expenditures for operation, maintenance and repair of property, depreciation expense, premium paid for workmen's compensation and public liability insurance, and taxes paid for unemployment insurance and social security, and all state and local license fees, property taxes and Federal income taxes, and a balance sheet taken at the close of said year.

The Commissioner, or the authorized committee of the Council, shall have access to the property, books, contracts, accounts and records during normal business hours at said place of business, for such information as may be required for the effective administration and enforcement of the provisions of this chapter, or for the adoption of any ordinances, rules or regulations affecting taxicab operations.

In addition to the foregoing reports, each cabman shall within

Preliminarily the Court's textual error should be corrected. Section 28-5.1 demands not that petitioner shall maintain its office in Chicago, but that petitioner shall have its "principal place of business" there. There is of course a significant difference between these requirements.

The foregoing passage reveals again the Court's failure to comprehend the nature of the service performed by petitioner. The focus of the Court's error is the phrase "accessible responsibility." The Court overlooked that the Chicago railroads are totally responsible for the interstation transfer service, and are permanently accessible. Precisely in point is this Court's statement in *Atchison, supra,* 357 U. S. at 86:

> "Moreover, § 302(c) of the Act provides that motor vehicle transportation between terminals, whether performed by a railroad or by an agent or contractor of its choosing, shall be regarded as railroad transportation and shall be subject to the same comprehensive scheme of regulation which applies to such transportation."

Section 302(c)(2), 49 U. S. C., provides in pertinent part:

> "[T]ransportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to Part I . . . in the performance within terminal areas of transfer, collection, or delivery service . . . shall be considered to be performed by such carrier . . . as part of, and shall be regulated in the same manner as, the transportation by railroad . . . to which such services are incidental."

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thirty days after the six months' period ended December 31 and within thirty days after the six months' period ended June 30 of each year file a sworn statement with the Commissioner showing his gross fares collected and his operating expenses for the six months immediately preceding said dates.

(Part not italicized added in 1959, R. 28. Words italicized added in 1963. R. 43.)

The statement of the Court of Appeals set forth above strongly suggests that the Court was equating the interstation transfer service with taxicab service. This would be error, for as concerns the issues of this case the two are far apart. We pursue this point briefly because of the nature of the Court's statement and because respondents in their brief opposing certiorari relied upon the two taxicab cases that we refer to below. In the interstation transfer operation the passenger, without any effort on his part, is met and furnished at his incoming railroad station with a motor service which is vouched for in all respects by the railroads, and for which the passenger pays no charge to petitioner. The immense contrast between that operation and taxicab service appears in a description of the latter by the Court of Appeals itself in *Evanston Cab Co.* v. *Chicago*, 325 F. 2d 907 (7th Cir. 1963), cert. den. 377 U. S. 943. Holding that a taxicab company could be compelled to have its principal place of business in Chicago, the Court said, quoting from *Chicago* v. *Vokes*, 28 Ill. 2d 475, 480, 193 N. E. 2d 40, 44 (1963), cert. den. 377 U. S. 124:

> "By its very nature the taxicab industry directly and substantially provokes considerations of public safety and welfare. Its vehicles are constantly on the streets, day and night, and the members of the public who utilize them must place almost a blind trust in the fitness of their equipment and the competence of their drivers. Thus, not only does the operation of the business call for measures to protect others using the streets and highways, but also for regulations which insure the highest degree of safety for its passengers.
> * * *
> "If corporations licensed to operate taxis in the city of Chicago have no place of business there and do not maintain their records or equipment there, the functions of investigation, inspection and supervision required in the public interest would be ex-

ceedingly difficult if not impossible to completely and adequately perform . . .'"[3]

There is plainly nothing in the foregoing description of the need for municipal regulation of taxicab service that applies to the interstation transfer service furnished by petitioner pursuant to its contract with the railroads. Respondents' reliance on these taxicab cases in its brief opposing certiorari, p. 9, is misplaced. These differences arise out of the very nature of the two services. The transfer service is interstate commerce performed on behalf of the railroads under § 202(c)(2) of the Interstate Commerce Act; whereas taxicab service is purely intrastate, performed casually by roving drivers, free from any supercession by the Act, free from any supervision by the Interstate Commerce Commission or the railroads. *United States* v. *Yellow Cab Co.*, 332 U. S. 218 (1947).

The statement of the Court of Appeals set forth at the beginning of this subpart B is clearly in conflict with decisions of this Court. In respect to petitioner's specialized service, the contested provisions of the ordinance are properly characterized and condemned by *Frost & Frost Trucking Co.* v. *Railroad Commission*, 271 U. S. 583, 591 (1926):

> "[T]he act, as thus applied, is in no sense a regulation of the use of public highways. *It is a regulation of the business of those who are engaged in using them.*" (Emphasis supplied.)

The City may not impose the requirement that petitioner shall file annually with the City a detailed statement of its expenses and earnings, and its balance sheet, and afford the City access to its books. These matters are not conceivably

3. Since the demand of the ordinance is that the "public passenger vehicle" operator must have its "principal place of business" in Chicago, it is begging the question for the Court of Appeals and the Supreme Court of Illinois to discuss the problem simply in terms of maintaining a "place of business" there.

related to traffic safety or any other legitimate concern of the City. Here the City seeks to impose upon petitioner the same financial supervision that it exercises over public taxicabs whose rates and service are under the City's control. Additionally petitioner and the railroads are subject to the jurisdiction of the Interstate Commerce Commission in respect to the financial matters which the City here seeks to supervise. 49 U. S. C. 302(c)(2); *Chicago* v. *A. T. & S. F. Ry. Co.*, 357 U. S. 77, 86-87.

The restriction that only residents of Chicago may be employed as chauffeurs is obviously unreasonable and unrelated to traffic safety, particularly in view of the fact that Chicago is closely packed in on three sides by numerous separate residential municipalities. Long ago this Court condemned a provision of an ordinance of the City of New York which had the practical effect of limiting drivers of express wagons to residents of that city. *Adams Express Co.* v. *New York*, 232 U. S. 14, 34 (1914):

> "When . . . the obvious convenience of their being able to secure drivers in Jersey City as well as in New York, are considered, the provision would seem to be unnecessarily burdensome."

Likewise, petitioner, a Delaware corporation authorized to do business in Illinois, cannot lawfully be compelled to maintain its principal place of business in Chicago. Such a requirement obviously would have a ruinously splintering impact upon enterprises engaged in interstate commerce. A corporation can have only one principal place of business. *Fairbanks Steam Shovel Co.* v. *Wills*, 240 U. S. 642, 646-647 (1916). Compare 28 U. S. C. § 1398, which requires an action to set aside an order of the Interstate Commerce Commission to be brought "only in the judicial district wherein is the residence or principal office" of the plaintiff. If every state or every city were to command that every corporation engaged in interstate motor

transportation must maintain its principal place of business within the territory of the legislative body, the result would be intolerable burdens of corporate proliferation or reorganization.

The City may not regulate interstate commerce in this fashion. Compare *Toomer* v. *Witsell*, 334 U. S. 385, 395-403, and concurring opinion, 407-409 (1948). The requirements of this ordinance are clearly distinguishable from those where a State or municipality requires out of state carriers to maintain registered agents and sufficient insurance coverage. In fact, Section 28-12 of the ordinance requires a terminal vehicle operator to carry adequate public liability insurance and this provision is not contested.

Petitioner has a justiciable complaint against this provision *now*. It would be improvident and oppressive to compel petitioner to suspend action for the removal of this shackle until it is actually ready to move its principal place of business to a more convenient location.

In at least three recent landmark decisions[4] this Court, acknowledging the power of State and local governments to regulate interstate carriers as to general safety matters, has struck down local regulatory measures which do not deal with safety of the carrier's operations but instead merely harass, obstruct or impede its interstate operation. Petitioner does not challenge the right of the City of Chicago to require its vehicles to "obey traffic signals, speed limits and other general safety regulations" nor does it challenge the right of the City of Chicago to "exact reasonable fees for [its] use of the local streets." Petitioner has consistently obeyed all safety regulations and paid all fees exacted by the City and State for use of the streets.

This Court in *Atchison* clearly pointed out that the City

4. *Chicago* v. *Atchison, Topeka & Santa Fe Railway Company*, 357 U. S. 77; *Castle* v. *Hayes Freight Lines, Inc.*, 348 U. S. 61, 64; *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U. S. 520, 529.

has no power to regulate petitioner in respect to the matters in controversy when it said:

> "National rather than local control of interstate railroad transportation has long been the policy of Congress. It is not at all extraordinary that Congress should extend freedom from local restraints to the movement of interstate traffic between railroad terminals." (357 U. S. at 87-88).

The total lack of relationship between the contested regulations and safety, and the inclusion of the elements of public convenience and necessity which petitioner must prove to establish that it is "qualified to pursue the occupation of a . . . coachman," make it clear that in this ordinance as amended the City has attempted to cancel the mandate of this Court in *Atchison*. That attempt should be struck down by the Court.

II.

THE INSTANT ACTION IS APPROPRIATE AND IS NOT PREMATURE, AND THE CONTRARY HOLDING OF THE COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF THIS COURT.

The judgment of the Court of Appeals was the following: "No actual controversy has been presented to the District Court as required by 28 U. S. C. A. § 2201" (the declaratory judgment provision). 358 F. 2d at 59 (R. 155). While the Court's reasons for this conclusion do not seem clear, apparently the Court decided that the ordinance is not unequivocally invalid on its face and that petitioner must await until the ordinance is forcibly applied before seeking judicial relief. The Court apparently overlooked that petitioner has been advised by the City on *at least two occasions* that it must comply fully with all provisions of the ordinance or be barred from using the streets. (R. 66, 125-128.) The Court conceded that "the ultimate aim of the

ordinance is not clear," that "it is true that its relation to safety is not in all respects self-evident", and that "As it stands, the ordinance cannot be unequivocally classified and, until it is applied, it lacks the test whereby its real nature is revealed." 358 F. 2d at 58. (R. 153-154.)

The Court was plainly in error and its concessions emphasize its error. The ordinance is invalid on its face in the particulars set forth above, and petitioner is entitled to seek judicial relief without submitting to the Commissioner *every year* the issue whether petitioner is "qualified to pursue the occupation" of transferring passengers, and to test the other questioned provisions. *Chicago* v. *Atchison, Topeka and Santa Fe Ry. Co.*, 357 U. S. 77, 89.

To compel petitioner to file annually an application which, by the express terms of § 28-6, the City reserves the right to deny, is of itself a violation of petitioner's rights under the Interstate Commerce Act and the Commerce Clause. *Public Utilities Commission of California* v. *United States*, 355 U. S. 534 (1958):

> "[W]here the only question is whether it is constitutional to fasten the administrative procedure onto the litigant, the administrative agency may be defied and judicial relief sought as the only effective way of protecting the asserted constitutional right." (p. 540.)

Petitioner cannot be compelled to submit to the City's discretion what it is entitled to have as a matter of right.

Petitioner has the responsibility of transferring thousands of railroad passengers between Chicago stations every day and it must maintain an adequate fleet of specialized motor vehicles and a highly experienced staff. It cannot be subjected to the uncertainty every year as to whether a city official, representing an obviously unfriendly City Council, is going to certify that it is "qualified to pursue the occupation" of transferring passengers. It

cannot be compelled to seek the City's grace in that respect. The fact that licenses were issued to petitioner in 1960 does not, under the specific terms of the ordinance, bind the City to issue them in subsequent years. *The uncertainty in that regard was deliberately created by the City.* No better case for declaratory relief could be imagined.

The terms of the ordinance are proof of the City's hostility to petitioner, and this obvious hostility furnishes ground for the relief which petitioner seeks. If the City had wanted to enact a provision under which petitioner could obtain vehicle licenses by the simple procedures which the states follow in licensing annually many millions of trucks, buses, and automobiles, it could have done so easily. Those methods are matters of common knowledge. That sort of licensing is all that the City is entitled to demand. But the City most conspicuously was not satisfied with that. By an entirely independent clause the City delegated to its Public Vehicle License Commissioner the discretion to decide annually, on some basis not disclosed, whether petitioner is "qualified to pursue the occupation of" performing the transfer service. The City also amended Chapter 28 to compel petitioner to file extensive financial data with the City, to open its books to City inspection, and to maintain its principal office in Chicago. In the face of all of this hostility petitioner is in constant danger of stoppage of its operations and cumulative criminal penalties (§ 28-32, R. 26) unless the relief here sought is granted. Petitioner is entitled to relief now. *Frozen Food Express* v. *United States,* 351 U. S. 40, 44 (1956); *Atchison,* 357 U. S. at 89.

In the *Atchison* litigation counsel for the City represented that petitioner had no reason to fear that the public convenience and necessity provision would be enforced according to its literal terms. 357 U. S. at 85. In the case at bar counsel for the City in their brief opposing certiorari

expressed the view that petitioner has no justiciable right to fear literal application of the terms of the ordinance (pp. 4, 5, 7, 8, 11). One fault with this sort of representation is that it comes from sources that have no right to make it. Only the Chicago City Council can speak on this subject, and its power "can only be exercised by it through ordinances duly passed." *People* v. *Clean Street Co.*, 225 Ill. 470, 479, 80 N. E. 298, 300 (1907).

The Council has passed the ordinance here in issue, and counsel for the City have no power to say that it will be enforced otherwise than as it is written. *Id.* It remains in effect as written, and subject to full enforcement, until it is repealed by the Council, irrespective of views of administrative officials. *City of Metropolis* v. *Gibbons*, 334 Ill. 431, 437, 166 N. E. 115, 118 (1929). In determining Constitutional rights, the words of the ordinance "must be taken as they read upon their face. . . . They cannot be qualified by speculation as to what is likely to happen in fact." *Kansas City Southern Railway Co.* v. *Kaw Valley Drainage District*, 233 U. S. 75, 78 (1914).

The Court of Appeals (358 F. 2d at 57-58, R. 152-153) relied exclusively upon *Continental Baking Co.* v. *Woodring*, 286 U. S. 352 (1932), and plainly erred in its application of that decision to the case at bar. The Kansas statute construed in *Continental Baking* was markedly different from the Chicago ordinance. Under the express terms of the statute the Kansas Public Service Commission did not have authority, similar to that granted by § 28-6 of the ordinance, to refuse a license to the type of "private" carrier whose status corresponded to that of petitioner (p. 365). Thus the Kansas statute, unlike the Chicago ordinance, was not invalid on its face.

The opinion in *Continental Baking* (p. 368) distinguished that case from *Smith* v. *Cahoon*, 283 U. S. 553 (1931). In the case at bar and in *Smith* v. *Cahoon* the carrier is faced

with threatened enforcement of the plain terms of a statute that unlawfully invests the administrative authority with discretionary power to deny the license. Distinguishing *Smith* v. *Cahoon* the Court pointed out in *Continental Baking* that in the latter "[T]he statute itself clearly distinguishes in fundamental matters between the obligations of public and private carriers and places upon the latter certain requirements which the State had power to impose." (286 U. S. at 368.) *Smith* v. *Cahoon* sustains petitioner's right to the injunctive relief sought here and was relied upon by the Court on this question in *Atchison*, 357 U. S. at 89. It should be noted that in its recitals from *Continental Baking* the Court of Appeals (358 F. 2d at 57-58, R. 152-153) omitted all references to this Court's language distinguishing that case from *Smith* v. *Cahoon*.

Moreover, since *Continental Baking* was decided (1932) Congress has by § 202(c) of the Interstate Commerce Act, 49 U. S. C. § 302(c), 56 Stat. 300, specifically "extend[ed] freedom from local restraints to the movement of interstate traffic between railroad terminals." 357 U. S. at 87-88.

The last paragraph of the Court's opinion in *Atchison*, 357 U. S. at 89, is altogether applicable here:

> "Since we hold that § 28-31.1 is completely invalid insofar as it applies to Transfer, that company was not obligated to apply for a certificate of convenience and necessity and submit to the administrative procedures incident thereto before bringing this action. See *Smith* v. *Cahoon*, 283 U. S. 553, 562; *Public Utilities Commission of California* v. *United States*, 355 U. S. 534, 539-540. Cf. *Staub* v. *City of Baxley*, 355 U. S. 313, 319."

CONCLUSION.

The Court should hold that insofar as they apply to petitioner the contested provisions of Chapter 28 of the Municipal Code of Chicago are invalid under the Interstate Commerce Act and the Commerce Clause of the Constitution.

Respectfully submitted,

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APPENDIX A.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

Railroad Transfer Service, Inc., a Delaware corporation,
Plaintiff-Appellant,
vs.
City of Chicago,
a municipal corporation, et al.,
Defendants-Appellees.

Appeal from the United States District Court of the Northern District of Illinois, Eastern Division.

July 20, 1964

Before SCHNACKENBERG, KNOCH and CASTLE, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* On December 13, 1963, Railroad Transfer Service, Inc., a Delaware corporation, plaintiff, appealed from a judgment of the district court entered November 27, 1963 dismissing plaintiff's first amended complaint filed October 31, 1963, which prayed for a declaratory judgment that section 28-1, *et seq.* of the municipal code of Chicago be held unconstitutional and void, and that the city and other defendants be enjoined from enforcing it against plaintiff.

The facts are not in dispute. Plaintiff has its principal place of business in the City of Chicago, and, under contracts with the railroads, which operate to and from Chicago rail terminals, it transports rail passengers and bag-

gage between said terminals. Otherwise it does not operate as a for-hire carrier. All of the railroad terminals which are served by Transfer are located in the downtown area of Chicago.[1]

On August 24, 1959, defendant city by ordinance amended its existing § 28-1 of the municipal code relating to public passenger vehicles, and thereby expressly defined the term "Terminal Vehicle" in such a way as to describe plaintiff's service and imposed a specified annual license fee for each such vehicle. The ordinance also granted to the Public Vehicle License Commissioner of the city authority to determine the financial responsibility of the licensee, and whether vehicles are safe as well as comfortable, as well as other powers of supervision over plaintiff's vehicles. The ordinance also required that plaintiff maintain its principal office in the City of Chicago, that its drivers reside in that city and that the color of its vehicles be approved by the Commissioner.

Under date of September 15, 1961, the Commissioner by letter notified plaintiff that unless it applied for licenses for its vehicles by September 22, 1961, it was to cease operation until the ordinance had been fully complied with.

This litigation followed.

After plaintiff filed its brief in this court on March 17, 1964, defendants filed their brief here on May 6, 1964 and stated therein that the City of Chicago on July 1, 1963 amended the ordinance here involved so that § 28-15.1 now provides:

> In the event that the Commissioner [Public Vehicle License Commissioner] after investigation and hearing, shall determine that any licensee . . . shall fail to carry out any representation made to the Commis-

1. This service is described in our earlier decision in *Atchison, Topeka & Santa Fe Railroad Company* v. *City of Chicago*, 240 F. 2d 930 (1957), affirmed, 357 U. S. 77-88 (1958).

sioner before the issuance of such license, or shall wilfully make any material misstatement of fact on any statement filed with the Commissioner, or if any . . . coachman [plaintiff is a coachman under section 28-1 (m) of said ordinance as amended July 1, 1963, p. 575 of said Council Proceedings] while in charge of a public passenger vehicle, as a chauffeur, shall operate any public passenger vehicle in violation of the provisions of this chapter or of the rules and regulations of the Commissioner relating to the administration and enforcement of the provisions of this chapter, the Commissioner may recommend to the Mayor that all public passenger vehicle licenses held by him be revoked and the Mayor, in his discretion, may revoke said licenses.

Theretofore said section read as follows:

28-15.1 *Discretionary Revocation of License.*) If any public passenger vehicle license was obtained by application in which any material fact was omitted or stated falsely, or if any cabman or coachman, while in charge of a public passenger vehicle as a chauffeur, shall operate any public passenger vehicle in violation of the provisions of this chapter or of the rules and regulations of the commissioner relating to the administration and enforcement of the provisions of this chapter, the commissioner may recommend to the mayor that all public passenger vehicle licenses held by him be revoked and the mayor, in his discretion, may revoke said licenses.

Plaintiff, when it filed its reply brief on June 1, 1964, stated that the reading of defendants' brief was the first time that plaintiff learned of this amendment of the ordinance. It contends with considerable logic that the date of this amendment to the ordinance was prior to the time that defendants filed a motion to strike the first amended complaint, which was November 21, 1963, "almost four months after the ordinance had been amended eliminating 'terminal vehicles' from its scope." Plaintiff points out

that it was on November 27, 1963 that the court's final order was entered herein.

Plaintiff argues from these facts that the copy of the ordinance attached to defendants' motion to dismiss had been amended four months earlier, and yet the defendants were silent about the "sweeping amendment". If so, it contends that the district court ruled without knowledge that the ordinance it was construing had been materially amended four months earlier; and that "terminal vehicles" had been removed from the ordinance. This amendment was disclosed to us for the first time in the defendants' brief filed in this Court. We express no opinion at this time as to this phase of the appeal.

In order that complete justice may be done in this case under these unusual circumstances, it is the order of this court that the judgment of the district court be vacated and this cause remanded to that court for further proceedings consistent with the facts now appearing in the record before us.

JUDGMENT VACATED AND CAUSE REMANDED WITH DIRECTIONS.

APPENDIX B.

EXTRACTS FROM CHAPTER 28, "PUBLIC PASSENGER VEHICLES," OF THE MUNICIPAL CODE OF CHICAGO.

Sec. 28-1 Definitions

"Chauffeur" means the driver of a public passenger vehicle licensed by the city of Chicago as a public chauffeur. (1952, 1959, 1963.) (R. 21, 29, 35.)

"Person" means a natural person, firm or corporation in his own capacity and not in a representative capacity. (1951, 1959, 1963.) (R. 21, 29, 34.)

"Cabman" means a person engaged in business as proprietor of one or more taxicabs. (1951, 1959, 1963.) (R. 21, 29, 35.)

"Coachman" means a person engaged in business as proprietor of one or more taxicabs. (1951, 1959, 1963.) (R. 21, 29, 35.)

"Coachman" means a person engaged in business as proprietor of one or more terminal vehicles (1951), livery vehicles, sight-seeing vehicles or terminal vehicles. (1959, 1963.) (R. 21, 29, 35.)

"Terminal vehicle" means a public passenger vehicle which is used exclusively by a coachman under contract with railroad or steamship carriers for the transfer of their passengers and hand baggage en route in interstate travel between railroad terminals and steamship docks pursuant to through route published tariffs. (1959.) (R. 29, 46.)

Sec. 28-4. No vehicle shall be licensed as a public passenger vehicle until it has been inspected under the direction of the commissioner and found to be in safe operating condition and to have adequate body and seating facilities which are clean and in good repair for the comfort and convenience of passengers. (1952.) (R. 21.)

Sec. 28-4.1. No vehicle shall be licensed as a public passenger vehicle unless it has two doors on each side, and no vehicle having seating capacity for more than eight adult passengers shall be so licensed unless it has at least two doors with fixed aisle space for access to said doors. (1959.) (R. 29.)

Sec. 28-5 Application. Applications for public passenger vehicle licenses shall be made in writing signed and sworn to by the applicant or, if applicant is a corporation, by its duly authorized agent, upon forms provided by the commissioner. . . . (1959.) (R. 30.)

Sec. 28-5.1 Qualifications. All corporate applicants for public passenger vehicle licenses shall be organized or qualified to do business under the law of Illinois and have their principal places of business in the city of Chicago. . . . (1959.) (R. 30.)

Sec. 28-6. Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. (1952.) If the commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed, and that the applicant is qualified to pursue the occupation of a cabman or coachman, the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued. (1959.) (R. 22, 29.)

Sec. 28-14. If any public passenger vehicle shall become unsafe for operation or if its body or seating facilities shall be so damaged, deteriorated or unclean as to render said vehicle unfit for public use, the license therefor shall be suspended by the commissioner until the vehicle shall be made safe for operation. . . . (1951.) (R. 25.)

Sec. 28-30.1. Every cabman, *corporation* and affiliate shall keep and provide accurate books and records of account of his operations at his place of business in the city. On or before May 1 of each year, every cabman, *corporation* and affiliate shall file with the Commissioner a profit and loss statement for the preceding calendar year, showing all his earnings and expenditures for operation, maintenance and repair of property, depreciation expense, premium paid for workmen's compensation and public liability insurance, and taxes paid for unemployment insurance and social security, and all state and local license fees, property taxes and Federal income taxes, and a balance sheet taken at the close of said year.

The Commissioner, or the authorized committee of the Council, shall have access to the property, books, contracts, accounts and records during normal business hours at said place of business, for such information as may be required for the effective administration and enforcement of the provisions of this chapter, or for the adoption of any ordinances, rules or regulations affecting taxicab operations.

In addition to the foregoing reports, each cabman shall within thirty days after the six months' period ended December 31 and within thirty days after the six months' period ended June 30 of each year file a sworn statement with the Commissioner showing his gross fares collected and his operating expenses for the six months immediately preceding said dates.

(Part not italicized added in 1959, R. 30. Words italicized added in 1963. R. 44.)

APPENDIX C.

INTERSTATE COMMERCE ACT.

Sec. 1, 49 U. S. C. § 1, 54 Stat. 900.

(4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers.

Sec. 3, 49 U. S. C. § 3, 54 Stat. 903.

(4) All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specif-

ically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

Sec. 202, 49 U. S. C. § 302, 56 Stat. 300.

(c) Notwithstanding any provision of this section or of section 203, the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation and equipment, shall not apply—

(1) to transportation by motor vehicle by a carrier by railroad subject to part I, or by a water carrier subject to part III, or by a freight forwarder subject to part IV, incidental to transportation or service subject to such parts, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be considered to be and shall be regulated as transportation subject to part I when performed by such carrier by railroad, as transportation subject to part III when performed by such water carrier, and as transportation or service subject to part IV when performed by such freight forwarder;

(2) to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to part I, an express company subject to part I, a motor carrier subject to this part, a water carrier subject to part III, or a freight forwarder subject to part IV, in the performance within terminal areas of transfer, collection, or delivery service; but such transportation shall be considered to be performed by such carrier, express company, or freight forwarder as part of, and shall be regulated in the same manner as, the transportation by railroad, express, motor vehicle, or water, or the freight forwarder transportation or service, to which such services are incidental.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 209

RAILROAD TRANSFER SERVICE INC., A DELAWARE CORPORATION,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, NOT INDIVIDUALLY, BUT AS MAYOR OF THE CITY OF CHICAGO; RAYMOND F. SIMON, NOT INDIVIDUALLY, BUT AS CORPORATION COUNSEL OF THE CITY OF CHICAGO; ORLANDO WILSON, NOT INDIVIDUALLY, BUT AS SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO; AND JAMES CARTER, NOT INDIVIDUALLY, BUT AS PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RESPONDENTS' BRIEF.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 54

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IN THE

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THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, NOT INDIVIDUALLY, BUT AS MAYOR OF THE CITY OF CHICAGO; RAYMOND F. SIMON, NOT INDIVIDUALLY, BUT AS CORPORATION COUNSEL OF THE CITY OF CHICAGO; ORLANDO WILSON, NOT INDIVIDUALLY, BUT AS SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO; AND JAMES CARTER, NOT INDIVIDUALLY, BUT AS PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RESPONDENTS' BRIEF.

QUESTIONS PRESENTED.

1. Whether what petitioner did to obtain licenses prior to filing this action in any way conflicts with the Commerce Clause or the Interstate Commerce Act?

2. Where petitioner has applied for and has received licenses under Chapter 28 of the Municipal Code of Chi-

cago, is any case of actual controversy presented in regard to provisions of the ordinance which have not been applied to it?

3. Whether Section 28-6 is substantially the same now as it was when petitioner attacked the validity of Chapter 28 in 1956, and, if so, is petitioner now precluded from challenging this section?

4. Whether petitioner's present characterization of Section 28-6 is properly before this Court, not having been made in the courts below, and whether that characterization is correct?

5. Does petitioner maintain its principal place of business in Chicago because it only does business in Chicago and not because of any requirement of the ordinance?

6. Whether petitioner may properly attack a provision of the ordinance not contained in Chapter 28, and whether a requirement that drivers of public passenger vehicles who drive only on the streets of Chicago must be residents of the City establishes "accessible responsibility?"

7. Whether petitioner may properly attack a provision of the ordinance which applies only to taxi-cab operators.

STATEMENT OF THE CASE.

Prior to filing the present action, Railroad Transfer Service, Inc., sometimes hereafter referred to as Transfer or Petitioner, applied for and was issued licenses for its terminal vehicles (R. 71, 136). To obtain the licenses it did the following: It submitted an application, it tendered a check for $1,630 representing the license fees, and it filed a list of equipment, a financial statement, a corporate certificate of authorization, a certificate of insurance, and the corporate charter (R. 71). In regard to the license fees, petitioner's vice president stated (R. 126):

"that except for such payment, no other requirements

> have been made by the Public Vehicle License Commissioner from that time until September 15, 1961, when he demanded payment of the 1961 fees as is shown by Exhibit B."

For the years 1961, 1962 and 1963, petitioner has deposited its license fees with the Clerk of the District Court, and the Annual Reports of the Public Vehicle License Commissioner for 1962 and 1963 indicate that Transfer was considered to have been licensed for those years (R. 80, 95).

On August 12, 1959, immediately prior to the amendment of Chapter 28 of the Municipal Code of Chicago, counsel for petitioner wrote to the Public Vehicle License Commissioner suggesting a change in the license fee schedule that it would find acceptable (R. 112). The City did not adopt the proposed fee schedule when the ordinance was amended (R. 121).

The District Court, after considering the pleadings and the arguments of counsel, was under the impression that petitioner simply did not wish to pay license fees. In its Memorandum Opinion that Court characterized the basis of petitioner's complaint as follows (R. 133):

> "If I am to find the principal source of the plaintiff's claimed grievance, it is that plaintiff is required to pay an annual 'license or tax' to the City of Chicago for the privilege of operating its terminal vehicles, whereas public utilities and other companies carrying on a similar business are not subject to the same requirement."

Section 28-6 of the Municipal Code of Chicago, the provision which petitioner has devoted most of its brief to discussing, and which does not relate to fees, was characterized in the complaint as follows (R. 8):

> "That the Public Vehicle License Commissioner of the City of Chicago is authorized to issue said licenses upon application if he finds 'that each said vehicle is

registered in applicant's name and is in safe and proper condition at the time the license is issued' and if the cost of said license is paid by applicant (Sec. 28-6, Municipal Code of Chicago)."

In the Court of Appeals, Transfer said in regard to Section 28-6 (Brief and Appendix for Plaintiff-Appellant, in the United States Court of Appeals, No. 15230, filed September 1965, p. 11):

> "Furthermore Section 28-6 permits the Commissioner to refuse to renew plaintiff's licenses without giving it a hearing after the Commissioner finds plaintiff not to be in compliance with all of the provisions of the ordinance."

In 1956, Transfer first brought an action to have all of Chapter 28 of the Municipal Code of Chicago declared invalid as applied to it. The Federal District Court upheld the validity of the entire Chapter. *Atchison, Topeka & Santa Fe Railway Co.* v. *City of Chicago,* 136 Fed. Supp. 476 (N. D. Ill. 1956). The Court of Appeals for the Seventh Circuit reversed only to the extent of holding Section 28-31.1 unconstitutional, 240 F. 2d 930 (7th Cir. 1957). This Court affirmed the Court of Appeals, 357 U. S. 77 (1958). In its brief before this Court at that time, petitioner stated (Brief of Appellees-Respondents, In the Supreme Court of the United States, No. 104, filed October 21, 1957, p. 5):

> "The City of Chicago has regulated the interstation transfer vehicles for many years by Chapter 28 of the Chicago Municipal Code. This chapter regulates all 'public passenger vehicles' and includes the transfer vehicles which it defines as 'terminal vehicles.' Prior to July 26, 1955, terminal vehicles were covered only by §§ 28-1 to 28-18, 28-31 and 28-32 of Chapter 28 (R. 171-189). These sections of Chapter 28 are not in issue, having been found applicable and valid by the Court of Appeals (R. 208-209, 200)."

At the time that petitioner first attacked Chapter 28 of the Municipal Code of Chicago, Section 28-6 provided as follows (R. 20):

> "Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition as provided in this chapter, the commissioner shall issue a public passenger vehicle license to the owner of the vehicle for the license period ending on the thirty-first day of December following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year."

This provision presently provides (§ 28-6 Municipal Code of Chicago, R. 27):

> "Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed, and that the applicant is qualified to pursue the occupation of a cabman or coachman, the commissioner shall issue to him and in his name a license for each public passenger vehicle

applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued."

Transfer operates under a year to year contract between itself and the railroads (R. 7).

SUMMARY OF ARGUMENT.

I.

Unlike the situation which confronted this Court in *Chicago* v. *Atchison, Topeka and Santa Fe Railway Company*, 357 U. S. 77 (1958), petitioner, in the case at bar, has applied for and has received licenses for its terminal vehicles. To obtain those licenses Transfer did the following: It submitted an application, it tendered a check for $1,630 representing the license fees, and it filed a list of equipment, a financial statement, a corporate certificate of authorization, a certificate of insurance, and the corporate charter (R. 71). This amounts to little more than registration and the payment of fees, requirements which have long been held valid. In this case, both Transfer and the City have acted, and experience has demonstrated that petitioner need only pay the terminal vehicle licensing fees and comply with very modest registration requirements to satisfy the applicable terms of the ordinance.

II.

Both the District Court and the Court of Appeals found that no case of actual controversy had been presented by petitioner.

A. Railroad Transfer, and not the City, has resurrected Section 28-6 for the sole purpose of attempting to create controversy where none exists. Section 28-6 is totally

unlike Section 28-31.1 the "convenience and necessity" provision which has long since been repealed. This latter provision applied exclusively to terminal vehicles, and precluded Transfer from operating until the City Council, on the recommendation of the Public Vehicle Commissioner, determined that additional terminal vehicles were needed. This Court in *Chicago* v. *Atchison, Topeka & Santa Fe Railway Company*, 357 U. S. 77 (1958), declared Section 28-31.1 invalid as applied to Transfer.

Section 28-6 applies to the thousands of public passenger vehicles which operate daily on the streets of Chicago, and was not designed to preclude Transfer from conducting its interstate business. Transfer does not have to obtain a certificate of "public convenience and necessity" to operate, but has applied for and received licenses for its vehicles, and has been operating them continuously without being subjected to the forbidden practices it now attributes to the ordinance. The City has maintained throughout this litigation that it is bound by this Court's decision in the *Atchison* case.

Section 28-6 has remained substantially the same since 1956 when petitioner first launched its attack on Chapter 28 of the Municipal Code of Chicago. It certainly was not amended to subvert the *Atchison* case. In spite of the similarity between Section 28-6 as it exists now and as it existed when Chapter 28 was before this Court in 1957, Transfer, at that time, failed to voice any objection to it. Instead, it conceded its validity as determined by the Court of Appeals.

Further, petitioner has deliberately chosen to ignore the first sentence of Section 28-6. The Section requires that an applicant be a "law abiding citizen;" that he show financial ability only to the extent necessary to render "safe and comfortable service"; and that he "maintain or re-

place equipment for such service and . . . pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period." These are specific safety requirements, and are conditions the Commissioner must abide by in determining whether an applicant is qualified.

The characterization which petitioner has now chosen to give Section 28-6 was not presented to either the District Court or the Court of Appeals. The petitioner should not be permitted to change its theory of the case at this time; but, even if this Court permits such a change, the sincerity of Transfer's fears regarding this Section cannot help but be questioned.

The mere susceptibility of the ordinance to a construction which could render it unconstitutional is not a proper basis for an injunction where there is no showing that the ordinance has ever been so construed or that the City has any intention of so construing it. In this case, the plainest construction of the ordinance is one which avoids a question of its constitutionality.

B. Transfer maintains its principal place of business in Chicago because its business is transporting passengers and baggage from one railway terminal in the City to another railway terminal in the City. It does not allege that it wishes to maintain its principal place of business elsewhere, and, surely, no controversy is engendered by an ordinance requiring petitioner to do that which it is doing, especially where it has not expressed a desire to do anything else. There has been no showing that the challenged provision even applies to Transfer.

C. The provision relating to chauffeur's qualifications is not contained in Chapter 28, the only part of the Municipal Code of Chicago challenged in the complaint. There has been no allegation that the challenged provision has

in any way damaged petitioner. A requirement that drivers who operate vehicles solely on the streets of Chicago be residents of the City, establishes, as the Court of Appeals pointed out, "accessible responsibility."

D. The City has not sought to impose on petitioner the requirement that it file annually a detailed statement of its expenses and earnings and afford the City access to its books. This provision was designed to apply only to taxi-cab operators for use in determining rates. The fact that the section uses the term "corporation" does not mean it was intended to apply to Transfer, or to every corporation doing business in Chicago.

ARGUMENT.

I.

Prior to filing the present action Transfer applied for and received licenses for its terminal vehicles. What it did to obtain those licenses did not in any way conflict with the Commerce Clause or the Interstate Commerce Act.

Unlike the situation which confronted this Court in *Chicago* v. *Atchison, Topeka and Santa Fe Railway Company*, 357 U. S. 77 (1958), the petitioner, in the case at bar, has applied for and has received licenses for its terminal vehicles. What it did to obtain those licenses is the best measure of what it has to do to comply with the City's ordinance.

On August 12, 1959, immediately prior to the amendment of Chapter 28 of the Municipal Code of Chicago, counsel for petitioner wrote to the Public Vehicle License Commissioner suggesting a change in the license fee schedule which the petitioner would find acceptable (R. 112). The proposed fee schedule was not adopted when the ordinance was amended on August 24, 1959 (R. 121). On August 26, 1960, an officer of petitioner along with one of its attorneys went to the office of the Public Vehicle License Commissioner seeking to pay fees and obtain licenses, under protest (R. 125). This tender was refused (R. 125). The petitioner's vice president alleged that since "he could not risk even a temporary disruption in service" he authorized the payment of fees for 1960 (R. 126). It is significant that it was the payment of fees which petitioner deemed crucial to obtaining the licenses. This supports the District Court's view that the "principal source of the plaintiff's claimed grievances . . . is that plaintiff is required to pay an annual license or tax" (R. 133).

On August 26, 1960, petitioner applied for the licenses, without protest, and the licenses were issued (R. 71, 136). To obtain the licenses it submitted an application, it tendered a check for $1,630 representing the license fees, and it filed a list of equipment, a financial statement, a corporate certificate of authorization, a certificate of insurance, and the corporate charter (R. 71).

In 1961, the petitioner, perhaps no longer fearful of even "a temporary disruption in service," refused to pay its license fees (R. 126). Pointedly, in regard to the 1960 fees, the petitioner's vice president stated (R. 126):

> "that except for such payment, no other requirements have been made by the Public Vehicle License Commissioner from that time until September 15, 1961, when he demanded payment of the 1961 fees, as is shown by Exhibit B . . ."

Exhibit B is the touchstone of petitioner's contention that the City is seeking to apply those provisions of the ordinance which petitioner contends (Br. pp. 8, 27) are in conflict with the Commerce Clause, the Interstate Commerce Act, 49 U. S. C. §§ 1 (4), 3 (4), 302 (c) (2), and the *Atchison* case, 357 U. S. 77 (1958). Exhibit B is a letter which states that unless petitioner complies with the ordinance it is ordered to cease and desist its operation (R. 128).

There are at least two answers to petitioner's present interpretation of the letter. First, even petitioner's vice president indicated that this letter was simply a demand for the payment of the license fees; i. e., nothing more was required "until September 15, 1961, when he demanded payment of the license fees as is shown by Exhibit B . . ." (R. 126). Read in the context of petitioner's unwarranted failure to pay its fees for 1961, the letter does not measure up to petitioner's present interpretation. Second, the City has repeatedly disclaimed any power to order petitioner

to cease and desist its operation. As pointed out by the District Court in its Memorandum Opinion (R. 136):

> "Since the complaint was filed, no action has been taken by [the Public Vehicle License Commissioner] except the admonitory letter of September 16, 1961. Defendant now concedes that the threat made in this letter was an idle threat and that under the ruling in the *Atchison* case, the City would have no right to issue a 'cease and desist' order."

For the years 1961, 1962 and 1963, petitioner has deposited its license fees with the Clerk of the District Court, and the Annual Reports of the Public Vehicle License Commissioner for 1962 and 1963 indicate that Transfer was considered to have been licensed for those years (R. 80, 95).

What petitioner did to obtain those licenses for 1960 was not in any way in conflict with the Commerce Clause, the Interstate Commerce Act, 49 U. S. C. 1(4), 3(4), and 302 (c)(2), or the *Atchison* case 357 U. S. 77 (1958). Indeed, petitioner does not contend that any of the aforementioned requirements do conflict with its interstate business. In regard to insurance, it expressly states that "§ 28-12 of the ordinance requires a terminal vehicle operator to carry adequate public liability insurance and this provision is not contested" (Br. p. 26).

Justice Harlan, in his dissent in *Atchison*, stated (357 U. S. at p. 91):

> "Only by refraining from passing on the ordinance until Chicago has had a chance to act under it do we respect the long-standing tradition of this Court not to interfere prematurely with the administration of state and local enactments."

A majority of the Court felt otherwise, and proceeded to declare Section 28-31.1, the long since repealed "convenience and necessity" provision, invalid.

In the case at bar, however, the situation is entirely different. *Here, everyone has acted.* The petitioner has applied for licenses and the City has issued them. What petitioner has to do, what the City requires it to do, has been spelled out by deeds; and there has been no showing of any conflict between the *application* of the ordinance and the movement of interstate commerce. Experience has demonstrated to petitioner that it need only pay the terminal vehicle licensing fees and comply with very modest registration requirements to satisfy the applicable terms of the ordinance.

This Court has frequently affirmed the validity of local enactments requiring registration and the payment of license fees. *Chicago* v. *Atchison, Topeka and Santa Fe Railway Company,* 357 U. S. 77 (1958). *Fry Roofing Co.* v. *Wood,* 344 U. S. 157 (1952), *Columbia Terminals Co.* v. *Lambert,* 30 F. Supp. 28 (1939), affirmed 309 U. S. 620 (1940), *Eichholz* v. *Public Service Commission,* 306 U. S. 268 (1939), *Continental Baking Co.* v. *Woodring,* 286 U. S. 352 (1932). Nothing more is required here.

II.

Petitioner has failed to present a case of actual controversy within the meaning of the Declaratory Judgment Act.

The present action was brought under the Declaratory Judgment Act, 28 U. S. C. § 2201 (R. 5). Both the District Court and the Court of Appeals found there was no case of actual controversy sufficient to warrant enjoining the City of Chicago and its officers from enforcing Chapter 28 of the Municipal Code of Chicago. The District Court, in its Memorandum Opinion, stated (R. p. 144):

> "Thus far there is no indication that the City has taken or will take any action in the exercise of its police powers that would either interfere with interstate com-

merce or would violate the plaintiff's right to due process of law."

The Court of Appeals, in *Railroad Transfer Service, Inc.* v. *City of Chicago*, 358 F. 2d 55 (1966), said (p. 59):

> "No actual controversy has been presented to the district court as required by 28 U. S. C. A. § 2201."

In regard to an action brought under the Declaratory Judgment Act, 28 U. S. C. § 2201, this Court, in *Public Affairs Press* v. *Rickover*, 369 U. S. 111 (1961), stated (p. 112):

> "The Declaratory Judgment Act was an authorization not a command. It gave the federal courts competence to make a declaration of rights; it did not impose a duty to do so. *Brillhart* v. *Excess Ins. Co.*, 316 U. S. 491, 494, 499; *Great Lakes Co.* v. *Huffman*, 319 U. S. 293, 299-300; *Federation of Labor* v. *McAdory*, 325 U. S. 450, 462; *Mechling Barge Lines* v. *United States*, 368 U. S. 324, 331. Of course a district court cannot decline to entertain such an action as a matter of whim or personal disinclination. 'A declaratory judgment, like other forms of equitable relief, should be granted only as a matter of judicial discretion, exercised in the public interest.' *Eccles* v. *Peoples Bank*, 333 U. S. 426, 431."

In the case at bar, the discretion of the District Court was properly exercised. There has been no showing of any case of actual controversy.

A. Section 28-6, which has not been applied to petitioner, is substantially the same now as when Transfer first attacked the validity of Chapter 28 in 1956. It is totally unlike the long since repealed "convenience and necessity" provision, and petitioner's present characterization of it appeared for the first time in its Petition for a Writ of Certiorari.

The crux of the petitioner's argument concerning Section 28-6 of the Municipal Code of Chicago is summed up in its Brief as follows (Br. pp. 8, 9):

"The requirement of § 28-6 that petitioner must prove *annually* to the City's satisfaction that it is 'qualified to pursue the occupation of' transferring interstate passengers between railroad stations, as a fixed condition to the right to perform the service, conflicts with §§ 1(4), and 202(c)(2) of the Interstate Commerce Act, 49 U. S. C. §§ 1(4), 3(4), 302(c)(2).

* * * * * *

"This clause of § 28-6 was enacted at the same time that the City Council repealed the requirement for proof of public convenience and necessity that was declared invalid in *Atchison*. The history of this clause and its structure within § 28-6 show that it was intended by a hostile City Council as further harassment of petitioner. If the City had wished in good faith to conform to the mandate of *Atchison* and limit its regulation of petitioner to simple licensing and lawful police regulation it easily could have done so, instead of arrogating to itself every year the right to determine whether petitioner is 'qualified to pursue the occupation of' transferring passengers. This clause is clearly set forth in § 28-6 as a requirement that is entirely separated from and independent of ordinary licensing and safety provisions."

Section 28-6 of the Municipal Code of Chicago has been the victim of unfettered imagination. Contrary to petitioner's assertions, it, and not the City, has resurrected this section for the sole purpose of creating a controversy where none exists.

It should first be made clear that Section 28-6 is not, as petitioner argues, a replacement for Section 28-31.1. This latter provision was declared invalid in *Chicago* v. *Atchison, Topeka & Santa Fe Railway Co.*, 357 U. S. 77 (1958), and was repealed in 1959 (R. 30). Section 28-31.1 applied *exclusively* to terminal vehicles (R. 26). It required that the City Council upon the recommendation of the Commissioner should determine whether "public convenience and necessity" required additional terminal vehicle serv-

ice (R. 26). Transfer was precluded from operating until it secured such a certificate. *Atchison,* 357 U. S. 77, 84, 85. This Court there pointed out that both the District Court and the Court of Appeals had held that Section 28-31.1 applied to Transfer and that the City had conceded that the section was clearly applicable to Transfer, saying (357 U. S. at p. 84):

> "After full argument on that point, both the District Court and a unanimous Court of Appeals held that § 28-31.1 applied to Transfer. That was the position of the city in both courts and it made no move there to have the matter remitted to the state courts. After referring to the provisions of § 28-31.1 the City declared in its brief in the Court of Appeals: 'A more accurate description of the business engaged in by Transfer would be hard to find.' We think this is a fair summarization."

This is not the situation in the case at bar.

Unlike the long since repealed Section 28-31.1, Section 28-6 does not single out "terminal vehicles" as the sole reason for its being. Transfer operates only twenty vehicles, while Section 28-6 was designed to apply to the thousands of other public passenger vehicles which are regulated by Chapter 28.

Unlike the situation in *Atchison,* neither the District Court nor the Court of Appeals has found that Section 28-6 applies to Transfer. The *City specifically denies that Transfer must prove "annually that it is qualified."* The City has maintained throughout this litigation that it is bound by this Court's determination in *Atchison,* and that the railroads are free to determine who shall transfer passengers between railway stations (R. 136).

In *Atchison,* unlike the situation in this case, the Parmelee Transportation Company, which was attempting to compete with Transfer for the interstation service, and

which had been rejected by the railroads, was granted automatically renewable licenses, "in perpetuity," in contrast with Transfer having to prove that "public convenience and necessity" demanded additional service (Br. p. 4.) This Court there said (357 U. S. at p. 88):

> "The railroads have rejected as unsuitable the only transfer service now licensed to operate by the City. If local officials can prevent them from providing this service by some other means a breakdown in the organized transfer of passengers could result. At a minimum they would be forced to deal once again with the rejected operator."

In the present case, Transfer has no competition; there has been no effort to discriminate against it; and the railroad's chosen agent is now, and has been, providing interstation transportation service.

Transfer does not have to obtain a certificate of convenience and necessity or prove the "elements" thereof as petitioner claims (Br. p. 27). To the contrary, as has already been demonstrated, petitioner is operating its vehicles and has been continuously operating its vehicles on the streets of Chicago without interruption. *It has applied for and received licenses for its vehicles* without being subjected to any of the forbidden practices it now attributes to the ordinance.

Section 28-6 has remained substantially unchanged since 1956 when petitioner first launched its attack on Chapter 28 of the Municipal Code. *Atchison, Topeka and Santa Fe Railway Co.* v. *City of Chicago,* 136 Fed. Supp. 476 (N.D. Ill. 1956). At that time Section 28-6 provided as follows (R. 20):

> "Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputa-

tion of the applicant as a *law abiding citizen;* the financial ability of the applicant to *render safe and comfortable transportation service,* to *maintain or replace the equipment* for such service and to *pay all judgments and awards* which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. *If the commissioner shall find that the applicant is qualified and that the vehicle for which a license is applied for is in safe and proper condition* as provided in this chapter, the commissioner shall issue a public passenger vehicle license to the owner of the vehicle *for the license period ending on the thirty-first day of December* following the date of its issuance, subject to payment of the public passenger vehicle license fee for the current year." (Emphasis added.)

Section 28-6 now provides (R. 20, 27):

"Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a *law abiding citizen;* the financial ability of the applicant to *render safe and comfortable transportation service,* to *maintain or replace the equipment* for such service and to *pay all judgments and awards* which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed, and *that the applicant is qualified to pursue the occupation of a cabman or coachman,* the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, *to terminate on the 31st day of December following the date of issue,* provided that each *said vehicle is registered in applicant's name and is in safe and proper condition* at the time the license is issued." (Emphasis added.)

Seizing upon this amendment, which on its face appears innocuous, petitioner has concluded that the City amended this provision to serve as a replacement for the repealed Section 28-31.1, in a "die hard effort to impair constitutional rights" (Br. pp. 15, 20). Contrary to this contention, prior to the amendment, in regard to those to whom it applied, the portion of the provision referred to by petitioner read (R. 20, 21):

> "If the commissioner shall find that the applicant is qualified . . . the commissioner shall issue a public passenger vehicle license for the license period ending on the 31st day of December following the date of its issuance . . ."

After the amendment, in regard to those to whom it applied, the portion of the provision referred to by petitioner read (R. 27):

> "If the commissioner shall find that the . . . applicant is qualified to pursue the occupation of a cabman or coachman, the commissioner shall issue . . . a license . . . to terminate on the 31st day of December following the date of issue . . ."

According to petitioner this new provision *added* the requirement that "the commissioner is to consider *each year* whether 'the applicant is *qualified to pursue the occupation* of a cabman or coachman'." (Br. p. 16). In reality, the only apparent difference in the ordinance, following its amendment, is the use of the specific terms "cabman" and "coachman." In both variations the applicant was determined qualified by the commissioner and the license expired on the 31st day of December.

The use of the specific terms "cabman" and "coachman" has a much blander explanation than petitioner would hope. Prior to 1959, all public passenger vehicles, of which there were 5,120 licensed as of 1963 (R. 95), were classified within the definition section of Chapter 28, under the terms "bus-

man", "cabman" or "coachman" (R. 19). Following the 1959 amendments to the ordinance the term "busman" was deleted and all public passenger vehicles were classified under the terms "cabman" or "coachman" (R. 27). Section 28-6 was amended to reflect this change.

In 1956 Transfer first brought an action to have all of Chapter 28 of the Municipal Code of Chicago declared invalid as applied to it. The Federal District Court upheld the validity of the entire Chapter. *Atchison, Topeka & Santa Fe Railway Co.*, v. *City of Chicago*, 136 Fed. Supp. 476 (N. D. Ill. 1956). The Court of Appeals for the Seventh Circuit reversed only to the extent of holding Section 28-31.1 unconstitutional, 240 F. 2d 930 (7th Cir. 1957). This Court affirmed the Court of Appeals, 357 U. S. 77 (1958). In its brief before this Court at that time, petitioner stated (Brief of Appellees-Respondents, In the Supreme Court of the United States, No. 104, filed October 21, 1957, pp. 5, 13, 17, 46):

> "The City of Chicago has regulated the interstation transfer vehicles for many years by Chapter 28 of the Chicago Municipal Code. This Chapter regulates all 'public passenger vehicles' and includes the transfer vehicles which it defines as 'terminal vehicles.' Prior to July 26, 1955, terminal vehicles were covered only by §§ 28-1 to 28-18, 28-31, and 28-32 of Chapter 28 (R. 171-189). *These sections of Chapter 28 are not in issue, having been found applicable and valid by the Court of Appeals* (R. 208-209, 200). They require a license for identification and regulation (R. 173, 174, 177 §§ 28-2, 28-5, 28-10, 28-11), an annual license fee (R. 175 § 28-7), observance of safety regulations (R. 173, 174, 181 §§ 28-4, 28-4.1, 28-17), and carrying insurance (R. 178 § 28-12). These provisions may be enforced by suspension or revocation of the license and by fines for violations (R. 179, 180, 189 §§ 28-14, 28-15, 28-32; R. 208-209)."

* * * * *

"Since only § 28-31.1 of Chapter 28 was held invalid, there remain in Chapter 28 licensing provisions as comprehensive as legitimate exercise of the police power can permit."

* * * * *

". . . *The Court held all of the rest of the ordinance* (R. 171-189, 44-45) *applicable and valid* (R. 208-210, 200). *Thus all of the ordinance existing prior to 1955, described by Parmelee,* pp. 5-7, *and which Parmelee considered adequate regulation,* p. 5, *still remains applicable and valid under the decision of the Court of Appeals.*"

* * * * *

We have pointed out above, p. 5, *that the Court of Appeals held only § 28-31.1 (R. 44-45) invalid* (R. 208) *and held the rest of Chapter 28* (R. 171-189) *valid and applicable* (R. 208-209, 200). There thus remain in Chapter 28 licensing provisions *as comprehensive as legitimate exercise of the police power can permit.*" (Emphasis added.)

To the extent that Section 28-6 has remained the same, and was part of the ordinance challenged in 1956, it should remain free from this belated attack on its validity. *Cromwell* v. *County of Sac,* 94 U. S. 351 (1876).

Further, by a peculiar method of statutory interpretation petitioner has disassociated the first and second sentences of Section 28-6. Petitioner states in regard to the clause contained in the last sentence of Section 28-6 (Br. p. 17):

> "It has no relation to any other requirement of the ordinance, either preceding or following it."

To the contrary, even as to those to whom it applies, Section 28-6 does not grant the Commisioner unfettered authority to determine who is qualified and who is not. Rather, the first sentence of the section, the sentence Transfer chooses to ignore, sets forth *particular* characteristics an applicant should possess. The ordinance requires that an applicant be a "law abiding citizen;" that he show finan-

cial ability, *only to the extent necessary to render "safe and comfortable service"*; and that he "maintain or replace equipment for such service and . . . pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period." These are specific requirements which directly relate to safety and are the conditions which the commissioner must abide by in determining whether an applicant is qualified. The City has not sought to impose these requirements on the petitioner.

In its Brief filed in this Court in 1957 (No. 104, *Parmelee Transportation Co.* v. *The Atchison, Topeka and Santa Fe Railway Co., et al.*, pp. 5-7), the Parmelee Transportation Company, which formerly conducted the interstation transportation service in Chicago, characterized all the regulatory provisions applicable in 1955. It said in regard to Section 28-6 (p. 6):

> "Section 28-6 required the commissioner to investigate the 'character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation' of the vehicle."

Railroad Transfer said in regard to the ordinance, as so characterized, in the Brief it filed in 1957 (Brief of Appellees-Respondent's, No. 104, in the Supreme Court of the United States, filed October 21, 1957, p. 17):

> "Thus all of the ordinance existing prior to 1955, described by Parmelee, pp. 5-7, and which Parmelee considered adequate regulation, p. 5, still remains applicable and valid under the decision of the Court of Appeals."

The trepidation with which Transfer now claims to view Section 28-6 is rendered somewhat suspect by the similarity of the ordinance as it existed in 1957 and as it exists now, and by petitioner's acquiescence in the characterization of the ordinance then given, as contrasted with the position it now takes. This suspicion is further amplified by the failure of Transfer's present characterization to manifest itself in the case at bar until it filed its Petition for a Writ of Certiorari (Pet. p. 8).

The present theory was not exhibited in the complaint. Petitioner did characterize Section 28-6, but it characterized it as follows (R. 8):

> "That the Public Vehicle License Commissioner of the City of Chicago is authorized to issue said licenses upon application if he finds 'that each said vehicle *is registered* in applicant's name and is in *safe and proper condition* at the time the license is issued' and if the *cost of said license* is paid by applicant (Sec. 28-6, Municipal Code of Chicago)." (Emphasis added.)

This is a far cry from petitioner's present contention that the City, in its effort to subvert this Court's decision in *Atchison*, 357 U. S. 77 (1958), amended the ordinance to require petitioner to prove *annually* that it is " 'qualified to pursue the occupation of' transferring interstate passengers between railroad stations . . ." (Br. p. 8). A broad gap exists between a requirement that the Commissioner find that the "vehicle is registered in applicant's name and is in safe and proper condition" and the present contention of the petitioner that it must "annually" prove that it is "qualified."

The District Court was not called upon to decide the issue now presented to this Court. In its first opinion that Court characterized the basis of petitioner's Complaint as follows (R. 133):

> "If I am to find the principal source of the plaintiff's

> claimed grievance, it is that plaintiff is required to pay an annual 'license or tax' to the City of Chicago for the privilege of operating its terminal vehicles, whereas public utilities and other companies carrying on a similar business are not subject to the same requirement."

The Court of Appeals also failed to hear the present argument. There petitioner said in regard to Section 28-6 (Brief and Appendix for Plaintiff-Appellant, in the United States Court of Appeals, No. 15230, filed September 1965, p. 11):

> "Furthermore Section 28-6 permits the Commissioner to refuse to renew plaintiff's licenses without giving it a hearing after the Commissioner finds plaintiff not to be in compliance with all of the provisions of the ordinance."

There is an absence of similarity between the position taken by petitioner in the Courts below and the position it now takes in regard to this provision. It is doubtful whether petitioner can properly change its theory of the case at this late date, but, even if this Court permits such a change, the sincerity of Transfer's fears regarding Section 28-6 cannot help but be questioned.

In *Columbia Terminals Corp.* v. *Lambert*, 30 Fed. Supp. 28 (1939), affirmed by this Court on appeal, 309 U. S. 620 (1940), a Missouri statute required motor carriers to obtain a permit, to carry insurance, and to observe certain safety regulations. *Columbia* did not apply for a State permit. It did apply for a federal permit but the Interstate Commerce Commission held [as it has held with respect to the transfer operations in this case, *Status of Parmelee Transportation Co.*, 288 I. C. C. 95 (1953)] that the service was not subject to federal regulation under the Motor Carrier Act. [Transfer's operations are not within the coverage of Part II of the Interstate Commerce Act,

which regulates motor carriers and it is not a "carrier" under Part I of that Act (288 I. C. C. 95, 104 (1953)]. When the State took steps to enforce the licensing requirement, *Columbia* sued for an injunction in a three-judge Court. After reviewing the pertinent decisions, the District Court recognized that the commerce clause is violated when a State "undertakes to exercise the right to say what interstate commerce will benefit the State and what will not." (30 Fed. Supp. at p. 32). It said, however (30 Fed. Supp. at p. 32):

> "The mere susceptibility of a statute to a construction which could render it unconstitutional does not afford sufficient ground for injunctive relief where, as here, it does not appear that the statute has ever been so construed, where the enforcing authorities affirm a recognition of its unconstitutionality if so construed and disclaim any intention to do so, and where plaintiff's real ground for relief is not the application of the statute to it."

These words are especially appropriate here. This Court is being presented with an interpretation of the City's ordinance which the City has specifically rejected, and is being asked to construe a provision of that ordinance in a manner which could render it unconstitutional, in spite of the fact that petitioner's "real ground for relief is not the application of the [contested provisions] to it." The holding in *Columbia Terminals* was approved in *Fry Roofing Co.* v. *Wood*, 344 U. S. 157, 162 (1952).

This Court has long recognized the canon that legislation is to be construed, if possible, to avoid constitutional questions. *Phyle* v. *Duffy*, 334 U. S. 431, 441 (1948); *Gerende* v. *Board of Supervisors of Elections of Baltimore City*, 341 U. S. 56, 57 (1951). In the case at bar the plainest construction of the ordinance is one which avoids a question of its constitutionality.

B. *Petitioner maintains its principal place of business in the City because its business is transporting passengers and baggage from one railway terminal in Chicago to another railway terminal in Chicago.*

The petitioner has attacked three other provisions of Chapter 28 of the Municipal Code of the City of Chicago. Petitioner argues (Br. p. 25) that it "cannot lawfully be compelled to maintain its principal place of business in Chicago." Contrary to this, petitioner, prior to the filing of this suit, voluntarily established its principal place of business in Chicago (R. 5). Petitioner maintains its principal place of business in the City not because of any compulsion, but because the exclusive nature of its business is transporting railroad passengers and baggage from one railway terminal in Chicago to another railway terminal in Chicago (R. 7).

Petitioner alleged in its complaint (R. 5):

> "that it is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal place of business in the City of Chicago, Illinois."

It does not allege that it wishes to maintain its principal place of business elsewhere. Surely, no controversy is engendered by an ordinance requiring petitioner to do that which it is doing, especially where it has not expressed a desire to do anything else. Furthermore, petitioner's argument assumes that the provision challenged, Section 28-5.1, applies to it. This has not been established. Section 28-5.1 was held valid in *Evanston Cab Co.* v. *City of Chicago,* 325 F. 2d 907 (7th Cir. 1963), certiorari denied, 377 U. S. 943 (1964).

Petitioner also argues (Br. p. 22) that the Court of Appeals in using the phrase "accessible responsibility" "overlooked that the Chicago railroads are totally respon-

sible for the interstation transfer service, and are permanently accessible." Under Illinois law, however, Transfer would be considered an independent contractor,* and it is doubtful if the railroads would consider themselves liable in a personal injury action occasioned by the negligent operation of one of petitioner's vehicles. *Densby* v. *Bartlett*, 318 Ill. 616 (1925), *Schluraff* v. *Shore Line Motor Coach Co.*, 269 Ill. App. 569 (1933).

Petitioner contends that (Br. p. 25)

> "[if] every state or every city were to command that every corporation engaged in interstate motor transportation must maintain its principal place of business within the territory of the legislative body the result would be intolerable burdens of proliferation or reorganization."

Of course, the simple answer to this is that no such requirement is involved here. Assuming, for the sake of argument, that Section 28-5.1 is applicable to petitioner, the contention which petitioner makes does not apply to it. Transfer is the unique interstate carrier which operates only on the streets of the City of Chicago. It need not be concerned with enactments of other local governments.

C. *The provision requiring chauffeurs who drive vehicles which operate only on the streets of Chicago to be residents of the City is not contained in any of the sections of the ordinance being challenged. Petitioner has not alleged any injury to itself because of this provision, and the provision establishes "accessible responsibility."*

Petitioner also argues (Br. p. 25) that "[t]he restriction that only residents of Chicago may be employed as chauffeurs is obviously unreasonable and unrelated to traffic

* Transfer operates under a year to year contract between itself and the railroads (R. 7).

safety . . ." It is questionable whether petitioner can properly raise this issue since the provision relating to a chauffeur's qualifications is not contained in any of the sections of the ordinance being attacked. Section 28-1, which petitioner refers to (Br. p. 6), merely contains the definition of a chauffeur, which, of itself, does not require as a prerequisite to licensing, residency in the City.

Furthermore, there is no allegation that this requirement has in any way damaged petitioner or affected its ability to obtain competent drivers or, in fact, that this provision has been applied to it.* Petitioner, therefore, has no standing to attack this provision. In any case, petitioner's operation is conducted solely in Chicago, and a requirement that chauffeurs reside in Chicago establishes as the Court of Appeals pointed out, "accessible responsibility." *Railroad Transfer Service, Inc.* v. *City of Chicago,* 358 F. 2d 55, 58 (1966).

Petitioner cites *Adams Express Corporation* v. *New York,* 232 U. S. 14 (1914), which it states (Br. p. 25) "condemned a provision of the ordinance of the City of New York which had the practical effect of limiting drivers of express wagons to residents of that city." In *Adams,* the express company did a regular business with New Jersey and other cities outside of New York (232 U. S. at p. 28). Here, petitioner's business is conducted solely within the City of Chicago.

The petitioner quotes (Br. p. 25) from *Adams,* 232 U. S. at p. 34:

> "When . . . the obvious convenience of their being able to secure drivers in Jersey City as well as in New York, are considered, the provision would seem to be unnecessarily burdensome."

---

* The Commissioner's only order in regard to Transfer's employees was that they be fingerprinted and examined by doctors and this was complied with (R. 153).

Petitioner fails to quote the next sentence of the opinion (232 U. S. at p. 34):

> "We are not called upon, however, to decide this point."

In *Railway Express* v. *New York,* 336 U. S. 106 (1949), this Court, in upholding the validity of a local regulation prohibiting advertising on vehicles other than those whereon the product or business of the owner was advertised, said (p. 111):

> "It is finally contended that the regulation is a burden on interstate commerce in violation of Art. I, § 8 of the Constitution. Many of these trucks are engaged in delivering goods in interstate commerce from New Jersey to New York. Where traffic control and the use of highways are involved and where there is no conflicting federal regulation, great leeway is allowed local authorities, even though the local regulation materially interferes with interstate commerce. The case in that posture is controlled by *S. C. Hwy. Dept.* v. *Barnwell Bros.,* 303 U. S. 177, 187, *et seq.*"

The regulations promulgated by the Interstate Commerce Commission do not in any way conflict with the City's ordinance. The regulations specifically state (49 C. F. R. § 190.30 (1964)):

> "Except as otherwise specifically indicated Parts 190-197 of this subchapter are not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the persons subject thereto."

The regulations further specifically provide (49 C. F. R. § 190.33 (1964)) that as to vehicles and drivers operating wholly within a municipality, the regulations are only applicable "when the vehicle involved is transporting explosives or other dangerous articles . . ."

Unlike the situation in 1914 when the *Adams* case was decided, this is a time when each year traffic accidents kill thousands of people and inflict millions of dollars worth of personal injury and property damage. To require "accessible responsibility" of drivers who operate solely within Chicago is not unrelated to traffic safety. The validity of this provision was upheld in *City of Chicago* v. *Vokes*, 28 Ill. 2d 475, certiorari denied 377 U. S. 124 (1964).

D. *Section 28-30.1 was designed to apply only to taxi-cab operators for use in determining rates. It does not apply to petitioner.*

Finally, the petitioner argues (Br. p. 24) that "[t]he city may not impose the requirement that petitioner shall file annually with the City a detailed statement of its expenses and earnings, and its balance sheet, and afford the city access to its books." The provision it says imposes this requirement is Section 28-30.1. This issue was not raised in the complaint (R. 5-14), was not argued before the District Court (R. 132), or the Court of Appeals, 358 F. 2d 55 (1966). It is not properly before this Court. Furthermore, there is nothing in the record to indicate that petitioner has been asked to comply with any such provision.

Even a cursory examination of the section indicates that it has no relationship to petitioner, but is designed for use in determining proper taxicab rates (R. 43). If, as petitioner argues, Section 28-6 (Br. p. 15), which was discussed earlier, was amended to include the term "coachman" so as to be made applicable to Transfer, then to be consistent, that term should have been carried over to Section 28-30.1, when it was amended. This was not done. Instead, this latter section refers to "every cabman, corporation and affiliate . . ." The use of the term "corporation" simply serves to include both individual and corporate taxicab

operators. By its very nature, the regulation of thousands of vehicles, the language used in Chapter 28 of the ordinance is often broad in scope. This does not mean that all those who could possibly be included fall within its coverage. Certainly, "corporation" does not refer to every corporation doing business in the City.

A review of the specific sections being challenged demonstrates that no case of actual controversy has been presented within the meaning of the Declaratory Judgment Act. Recognizing the presumption of validity in favor of the ordinance it would be contrary to the meaning of the Act to allow a cause of action for the sole purpose of testing the validity of provisions of an ordinance which have not been applied to petitioner, and which have not interfered with its business. In *Public Service Commission* v. *Wycoff Co.*, 344 U. S. 237 (1952), this Court, in denying a similar request for relief said (pp. 244, 245, 246):

> "A multitude of rights and immunities may be predicated upon the premise that a business consists of interstate commerce. What are the specific ones in controversy? The record is silent and counsel little more articulate. We may surmise that the purpose to be served by a declaratory judgment is ultimately the same as respondent's explanation of the purposes of the injunction it originally asked, which is '*to guard against the possibility* that said Commission would attempt to prevent respondent from operating under its certificate from the Interstate Commerce Commission.'
>
> ". . . We may conjecture that respondent fears some form of administrative or judicial action to prohibit its service on routes wholly within the state without the Commission's leave. What respondent asks is that it win any such case before it is commenced.
>
> ". . . [W]hen the request is not for ultimate determination of rights but for preliminary findings and conclusions intended to fortify the litigant against

future regulation, it would be a rare case in which the relief should be granted."

The case at bar is not one where Transfer has refused to apply for a license and has challenged the constitutionality of the ordinance. *Atchison*, 357 U. S. 77 (1958). This is not a case where Transfer has applied for a license and has been refused. *Buck* v. *Kuykendall*, 267 U. S. 307 (1925), *Bradley* v. *Public Utilities Commission*, 289 U. S. 92 (1933). This is the strange case where Transfer has applied for licenses, has received them, and has subsequently challenged the constitutionality of the ordinance on the ground that interstate commerce has been impeded.

As pointed out by the Court of Appeals, the City recognizes that it cannot prevent the operation of interstate business, although it does have the authority to assess reasonable vehicle license fees and to require compliance with safety regulations. As also pointed out by the Court of Appeals, petitioner has not pleaded any injury and has been conducting "its terminal transfer operation without interruption or interference by Chicago or any of the individual defendants." No actual controversy has been presented, as required by the Declaratory Judgment Act, and, therefore, the opinion of the Court of Appeals should be affirmed.

Conclusion.

For all of these reasons the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 209

RAILROAD TRANSFER SERVICE, INC.,
A Delaware Corporation,
Petitioner,

vs.

THE CITY OF CHICAGO,
A Municipal Corporation, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF CHICAGO TERMINAL RAILROADS AS AMICUS CURIAE IN SUPPORT OF PETITIONER.

The railroads named below[1] present this brief as *amicus curiae* in support of petitioner.

---

1. The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Chicago & Eastern Illinois Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago, Rock Island and Pacific Railroad Company; Chicago South Shore and South Bend Railroad; Erie-Lackawanna Railroad Company; Canadian National Railway Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Monon Railroad; The New York Central Railroad Company; Norfolk and Western Railway Company; and The Pennsylvania Railroad Company.

INTEREST OF THE RAILROADS

The railroads named are those on whose behalf petitioner is transferring passengers between railroad stations in Chicago, pursuant to the terms of a written contract between the railroads and petitioner.

The railroads wish to make it entirely clear that they support petitioner and have the same interest as petitioner in reversing the judgment of the Court of Appeals. But the railroads have their special interests in aspects of this litigation that may not adequately be presented by the parties.

ARGUMENT

The railroads support the position of petitioner in all respects. Obviously, the interests of the railroads and of petitioner in the case at bar are as one. Under § 202(c) of the Interstate Commerce Act, 49 U.S.C. § 302(c), petitioner is the *alter ego* of the railroads in performing the interstation transfer service.

However, the interests of the railroads in this litigation are more extensive than the immediate concerns of petitioner. The need of the *railroads* for a dependable transfer service under their own control, free from local interference, was a principal ground for the Court's decision that freed petitioner from the shackles that would have been imposed upon it by the Chicago ordinance held invalid in *Chicago* v. *Atchison, Topeka & Santa Fe Railway Company*, 357 U.S. 77, 87-88 (1958).

A crucial issue here is the conflict of § 202(c) with a local regulatory ordinance. The railroads are engaged in extensive § 202(c) operations throughout the United States, largely in freight service. An affirmance of the judgment of the Court of Appeals could have adverse

effects upon that service extending nationwide; the result would not simply be confined to interstation passenger transfer in Chicago.

In *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60 (1945), the Court held that § 202(c) is an expression of the National Transportation Policy of Congress of a means of preserving the "inherent advantages" of railroad transportation. The Court said in part:

> "When Congress directed that the act should be administered to preserve the inherent advantages of each mode of transportation, it is abundantly clear that it was not intended to bar railroads from the operation of off-the-rail motor vehicles. . . . Section 202(c)(1) of the 1940 Interstate Commerce Act, part II, as amended, withdraws railroad operation of motor carriers in terminal areas from the scope of motor carrier regulation and leaves such operations under part I." (pp. 66-67.) (Footnote quoting § 202(c) omitted.)

In the performance by railroads of all-rail trailer-on-flat-car service, the trailers are handled in pickup, transfer, and delivery service in terminal areas by the railroads or their agents under the terms of § 202(c). The great importance to the railroads of this form of terminal area operation was explained by the Interstate Commerce Commission in *Movement of Highway Trailers by Rail*, 293 I.C.C. 93, 101-104 (1954). As there shown, § 202(c) is the indispensable foundation of all-rail TOFC service. This form of § 202(c) operation is engaged in by the railroads, by themselves or their agents, in every shipping area throughout the United States. It is of paramount importance to the railroads that this service be kept free from unlawful local regulatory obstructions.

The importance to commerce of terminal area transpor-

tation was demonstrated in *Cartage, Rail to Steamship Lines at New York*, 269 I.C.C. 199 (1947), where the Interstate Commerce Commission held that it had authority to compel railroads to perform § 202(c) motor service between terminals in the New York area.

In *Atchison*, 357 U.S. at 86-88, the Court emphasized the importance of § 202(c) to the railroads. Under review there was paragraph (2) of that section, which authorizes the railroads to perform the interstation transfer service through the medium of a person acting "as agent or under a contractual arrangement." As the Court pointed out there, all of the rights the railroads may themselves exercise under paragraph (1) may be delegated by the railroads under paragraph (2) to their agent or contractor. As the Court said:

> "We believe the Act authorizes the railroads to engage in this transfer operation themselves or to select such agents as they see fit for that purpose without leave from local authorities." (p. 87)

CONCLUSION

It is of great importance to the Chicago Terminal Railroads and to the railroad industry of the Nation that the contested provisions of the Chicago ordinance be held invalid and that the judgment of the Court of Appeals be reversed.

Respectfully submitted,

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

Office-Supreme Court, U.S.
FILED
JAN 16 1967
JOHN F. DAVIS, CLERK

No. 209

RAILROAD TRANSFER SERVICE, INC., A DELAWARE CORPORATION,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION; RICHARD J. DALEY, NOT INDIVIDUALLY, BUT AS MAYOR OF THE CITY OF CHICAGO; RAYMOND F. SIMON, NOT INDIVIDUALLY, BUT AS CORPORATION COUNSEL OF THE CITY OF CHICAGO; ORLANDO WILSON, NOT INDIVIDUALLY, BUT AS SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO; AND JAMES CARTER, NOT INDIVIDUALLY, BUT AS PUBLIC VEHICLE LICENSE COMMISSIONER OF THE CITY OF CHICAGO,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONER'S REPLY BRIEF.

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PETITIONER'S REPLY BRIEF.

1.

Two major concessions in respondents' brief are not consistent with the opinion of the Court of Appeals. Therefore, the judgment of that Court should be vacated or reversed so that effect may be given to respondents' concessions.

Respondents' brief makes two concessions on major issues. These concessions favor petitioner and are inconsistent with the opinion of the Court of Appeals. The

judgment of that Court should therefore be vacated or reversed in order that a judgment may be entered in the District Court which gives effect to respondents' concessions.

A. In Respect to § 28-6 of the Ordinance.

Respondents say (p. 16) in respect to § 28-6:

> "The *City specifically denies that Transfer must prove 'annually that it is qualified.'* The City has maintained throughout this litigation that it is bound by this Court's determination in *Atchison*, and that the railroads are free to determine who shall transfer passengers between railway stations (R. 136)." (Emphasis is in text.)

Up to now respondents have contended that the ordinance is valid on its face. Their concession must constitute an admission either that the amendment of 1959 to § 28-6 does not in terms apply to petitioner, or that it is invalid on its face as applied to petitioner. The first alternative is not tenable. We have, of course, argued in favor of the second.

Respondents made no corresponding concession in their brief opposing our petition for certiorari, although our argument there against the validity of § 28-6 was the same argument that we now assert in our main brief.

In our second amended complaint, paragraph 18 (R. 11), we alleged as a ground of invalidity of the ordinance in general and of § 28-6 in particular that "[P]laintiff . . . can be denied the right to operate its vehicles by the Public License Commissioner of the City of Chicago (Section 28-6, Municipal Code of the City of Chicago). . . ." The City responded to this in its motion to dismiss. After quoting (pp. 56-57) more than half of a page of the *dissent* in *Chicago* v. *Atchison, Topeka & Santa Fe Railway Co.*, 357

U. S. 77, at 90-91, *without identifying it as dissent*, the City's motion to dismiss argued (p. 57):

> "Thus, the City has the constitutional power of regulation by ordinance over the operation of plaintiff's terminal vehicles.
>
> "The sections of the ordinance referred to, and the allegations contained in paragraphs . . . 18 of the Second Amended Complaint are appropriate and reasonable regulatory measures within the proper scope of the City's aforesaid power of regulation."

The opinion of the Court of Appeals does not reflect any concession by respondents of the character they now present. In a cryptic footnote the Court states: "Chicago now admits that it has no power to stop Transfer's operations" (358 F. 2d at 57 n. 2; R. 150). No source of the authority for this statement is supplied, and any effect it might suggest is overcome by other parts of the opinion. The footnote is appended to the Court's quotation of a letter from the Commissioner to petitioner dated September 15, 1961, advising that unless petitioner complies with the ordinance it must cease and desist from its operations.

The footnote is overcome by the Court's ultimate holding that the ordinance is valid on its face. If it is valid on its face the City can "stop Transfer's operations," as the City argued in its motion to dismiss. The Court's holding is fairly summarized in the following quotations from the opinion: "As written, however, the ordinance does not collide with federal preemption. . . . [T]he ordinance is not offensive on its face. . . . As it stands, the ordinance cannot be unequivocally classified, and, until it is applied, it lacks the test whereby its real nature is revealed." (358 F. 2d at 57, 58; R. 151, 152, 154.)

Whereas the Court held that the ordinance is not invalid on its face, respondents' concession necessarily must be based upon the conclusion that § 28-6 is invalid on its

face because in plain language it requires petitioner to prove each year that petitioner "is qualified to pursue the occupation of" transferring interstate passengers between railroad stations. The exact words of part of respondents' concession are: "The *City specifically denies that Transfer must prove 'annually that it is qualified.'*" (Br. p. 16; emphasis is in text.) Whereas the Court held that "until it is applied" the validity of the ordinance cannot be determined, respondents concede now that § 28-6 is invalid as applied to petitioner.

It is therefore submitted that the judgment of the Court of Appeals should be vacated or reversed in order to permit the District Court to enter a decree that the portion of § 28-6 here in issue is unlawful upon its face and cannot be applied to petitioner, and that the District Court should be instructed to enter such a decree. This is the only way in which respondents' concession can be made effective. As it now stands the opinion of the Court of Appeals presents a major variance from respondents' concession.

B. In Respect to Section 28-30.1.

As to § 28-30.1 respondents state (br. p. 30):

> "Section 28-30.1 was designed to apply only to taxi-cab operators for use in determining rates. It does not apply to petitioner."

This section requires on its face, by force of a 1963 amendment, that petitioner keep accurate books of account at its Chicago office and shall annually on or before May 1 file with the Commissioner a profit and loss statement for the preceding calendar year showing in great detail its earnings and expenses, and its balance sheet at the end of the year; and the Commissioner is granted access to its records. In our main brief we included a copy of § 28-30.1 at pages 21 and 39, and we urged its invalidity as applied

to petitioner at pages 24-25. In our petition for certiorari (pp. 12-13) we made a similar attack upon its validity, but respondents made no similar concession in their brief opposing our petition.

On this issue the Court of Appeals said:

> "To require Transfer . . . to give proof of financial responsibility is but to establish accessible responsibility. Such requirements are reasonably within police powers of promotion of welfare." (358 F. 2d at 58, R. 153.)

Respondents' concession that § 28-30.1 does not apply to petitioner must be taken as meaning that this section cannot lawfully be applied to petitioner. Respondents cannot properly say that § 28-30.1 does not in terms apply to petitioner since by force of the 1963 amendment it plainly does. See our main brief, pages 6, 21, 24-25. Contrary to respondents' statement (br. pp. 30-31), the use of the term "corporation" in the 1963 amendment does not serve "to include both individual and corporate taxicab operators," since by plain definition the word "cabman" in § 28-30.1, before the 1963 amendment, included both individual and corporate taxicab operators. By § 28-1 (R. 27) "cabman" was defined as a *person* engaged as a proprietor in operating taxicabs, and the definition of *person* included a corporation.

Additionally, the 1963 amendment not only added the word "corporation" to § 28-30.1; it also added a third paragraph laying additional obligations *only on cabmen*. See our main brief, pages 21-22, and R. 43. The term "corporation" applies to corporations subject to Chapter 28. Thus, the 1963 amendment made petitioner, as such a corporation, subject to the first two paragraphs of § 28-30.1, but it made "cabmen," and not corporations generally, subject to the third paragraph also. This exercise of selectivity by the City Council shows that it intended to bring

all corporations subject to Chapter 28, and not already included as "cabmen," within the coverage of the first two paragraphs of § 28-30.1, while making only taxicab operators subject also to the third paragraph. *California* v. *Taylor*, 353 U. S. 553, 564-565 (1957).

We submit that the Court should take the same action in respect to § 28-30.1 as we have requested as to § 28-6.

Despite respondents' concessions, it seems appropriate to reply to other parts of respondents' brief.

2.

Section 28-6 as amended in 1959 is entirely different in wording and in legal consequences from what it was before the amendment.

Respondents argue (br. p. 14) that "Section 28-6 . . . is substantially the same now as when Transfer first attacked the validity of Chapter 28 in 1956." (The suit was actually commenced in 1955. 240 F. 2d at 933.) Proceeding from that premise (pp. 14-25) respondents contend that petitioner's attack on § 28-6 is barred because all of Chapter 28 except § 28-31.1, the public convenience and necessity requirement, was held valid in *Atchison*, 357 U. S. 77 (1958). This contention is without merit because the premise is erroneous.

As shown in our main brief, pages 15-17, the 1959 amendment added to § 28-6 an entirely new provision, that an applicant for a public passenger vehicle license must show that it "is qualified to pursue the occupation of a cabman or coachman." By definition "coachman" includes one who carries passengers between railroad stations. It is this new 1959 provision that is in issue here. The new

phrase in § 28-6 plainly calls for a discretionary judgment by the Commissioner. Judicial construction of similar phraseology in statutes so holds.

Associated Transport, Inc. v. *Fowler,* 206 Tenn. 642, at 645-647; 337 S. W. 2d 5, at 6-7 (1960), construed a Tennessee statute providing that a certificate of convenience and necessity to operate as a motor common carrier, issued by the Tennessee Service Commission, could be transferred only "if the commission shall be of the opinion that the purchaser thereof is in all respects qualified under the provisions of this chapter, to conduct the business of a motor carrier within the meaning thereof." The Commission denied the application to transfer and the Court sustained the Commission, holding that under the "clear meaning" of the statute the Commission had the same discretion to deny the transfer as it had to deny an original application for a certificate of convenience and necessity.

Trusteed Funds, Inc. v. *Dacey,* 160 F. 2d 413 (1st Cir. 1947), considered the Federal statute which compels in proper circumstances restoration of a discharged soldier to his former civilian position. The employee seeking his old job must establish that he "is still qualified to perform the duties of such position." The District Court had ruled that this phrase "means simply physically and mentally qualified" and ordered restoration (p. 420). The Court of Appeals reversed, holding that this construction was too narrow and that the phrase gave the Courts discretion to consider the whole area of "qualification" including "mental and temperamental elements consistent with harmonious relations and mutual trust and confidence on the part of the several managers who must work together" (p. 421).

Section 28-6 in its pre-1959 form regulated the interstation transfer service while Parmelee Transportation Co. was performing it for the railroads. Apparently, in the

opinion of the City Council, § 28-6 in its pre-1959 form was adequate for that purpose. When Parmelee's contract was terminated in 1955, the City Council passed the public convenience and necessity section which was adjudged unlawful in *Atchison*, 357 U. S. 77, 80, 84 (1958). The *Atchison* decision, in 1958, restored the regulatory *status quo* that had existed before 1955; it made the regulatory provisions of Chapter 28 just the same for petitioner as they had been for Parmelee before 1955. But the City Council was not content with that. In 1959 the Council repealed the outlawed public convenience and necessity section which applied to petitioner, but by the same ordinance it added the provision to § 28-6 that requires petitioner every year to prove to the satisfaction of the Public Vehicle License Commissioner that petitioner "is qualified to pursue the occupation of" transferring passengers between railroad stations.

In these circumstances the plain legislative intent to add a new requirement to § 28-6 cannot be disregarded. The governing principle was stated in *Acme Fireworks Corp.* v. *Bibb*, 6 Ill. 2d 112, 117, 126 N. E. 2d 688, 690-691, 127 N. E. 2d 444 (1955):

> "When dealing with the construction and interpretation of amendatory acts, we have many times held that the presumption is that every amendment of a statute is made to effect some purpose, and that effect must be given the amended law in a manner consistent with the amendment."

To the same effect is *United States* v. *McClure*, 305 U. S. 472, 477 (1939).

Respondents state (Br. p. 16) that unlike § 28-31.1, held invalid in *Atchison*, § 28-6 does not single out petitioner's 20 vehicles, since § 28-6 "was designed to apply to the thousands of other public passenger vehicles which are regulated by Chapter 28." In practical effect, however, the

1959 amendment to § 28-6 does single out petitioner's vehicles. The "thousands of other" vehicles are mostly taxicabs (R. 72). For many years, and before 1955, taxicab operators were, and they still are, subject to §28-22.1 which requires a cab company to prove public convenience and necessity for every cab put in operation (R. 24-25, 29). The outlawed § 28-31.1 was copied directly from 28-22.1 (compare the two, R. 24-25 and R. 26). Up to 1959 § 28-22.1, and § 28-6 before the 1959 amendment, were considered adequate for regulation of taxicabs; and up to 1959 § 28-6 alone and unamended was considered adequate for regulation of all vehicles except taxicabs and terminal vehicles. But when in 1958 § 28-31.1, which applied only to petitioner's terminal vehicles, was held invalid, the City proceeded in 1959 to amend § 28-6 by requiring proof "that the applicant is qualified to pursue the occupation of a cabman or coachman." The only carrier affected by the invalidity of § 28-31.1 was petitioner; all other types of city regulated carriers were still as fully regulated as they ever had been. So the City filled that single void by amending § 28-6. A cabman who had to prove public convenience and necessity was hardly affected by the amendment to 28-6.

3.

The circumstances under which petitioner obtained licenses in 1960 are not a "measure of what it has to do to comply with the City's ordinance" (Resp. br. p. 10).

Respondents point out (Br. pp. 10-13) that petitioner obtained licenses in 1960, and they argue that "what it did to obtain those licenses is the best measure of what it has to do to comply with the City's ordinance." That is plainly not correct. Every year, irrespective of what has happened before, petitioner is faced with the express requirement of § 28-6 that it must prove to the satisfaction

of the Public Vehicle License Commissioner that it is "qualified to pursue the occupation of" transferring passengers between railroads stations in order to obtain licenses. The fact that an unlawful demand for a local license to engage in interstate commerce has been complied with, and the license granted, does not establish that the license requirement is not an unconstitutional burden on interstate commerce, nor is the licensee foreclosed from contesting the validity of future application of the ordinance. *Adams Express Co.* v. *New York*, 232 U. S. 14, at 29-30, 31 (1914); *Harman* v. *Chicago*, 147 U. S. 396, at 398-399 (1893).

In September 1961, the Public Vehicle License Commissioner wrote to petitioner that unless it "fully complied" with the ordinance it must cease and desist from its operations (R. 127-128). As to this the District Court said: "Defendant now concedes that the threat made in this letter was an idle threat, and that under the ruling in the *Atchison* case, the City would have no right to issue a 'cease and desist' order" (R. 136).

Despite this concession, however, the District Court held the ordinance valid on its face. So did the Court of Appeals. Both Courts held that no controversy could arise until some part of the ordinance was actually enforced against petitioner. Thus, despite this concession, the judgment of the Court of Appeals remains that the ordinance is not invalid on its face.

Moreover, despite this concession respondents continued, until the concessions set forth in our part 1 above, to contend that the ordinance was valid on its face.

4.

Contrary to respondents' assertions, petitioner has contested the validity of section 28-6 from the beginning of this litigation and on the same grounds that are presented in the petition for certiorari.

Respondents assert (Br. pp. 14, 23, 24) that petitioner's present "characterization" of § 28-6 first appeared in the petition for certiorari. That is not correct. The excerpt from our second amended complaint which is quoted in respondents' brief, page 23, as our "characterization" of § 28-6, is incomplete. Paragraph 9 of our second amended complaint (R. 9) alleges, referring generally to Chapter 28, "That said ordinance gives the Commissioner and/or the Mayor discretionary authority to . . : deny licenses to plaintiff without hearing and without relationship to the safety of plaintiff's operations . . .," and that this obstructs interstate commerce in violation of §§ 1(4), 3(4), and 202(c) of the Interstate Commerce Act. Paragraph 18 (R. 11) alleges in part:

> "[T]hat plaintiff is the only operator of motor vehicle buses for the transportation of passengers to and from points and places using the streets of the City of Chicago which can be denied the right to operate its vehicles by the Public License Commissioner of the City of Chicago (Section 28-6, Municipal Code of the City of Chicago) . . ."

In their motion to dismiss our second amended complaint respondents said in part (R. 57):

> "The sections of the ordinance referred to, and the allegations contained in paragraphs 7, 8, 9, 16, 17 and 18 of the Second Amended Complaint are appropriate reasonable regulatory measures within the proper scope of the City's aforesaid power of regulation."

In the District Court and in the Court of Appeals petitioner pressed its claim that the ordinance as a whole and § 28-6 in particular were unlawful upon their face because they gave the City discretionary authority to deny petitioner the right to operate. Both Courts brushed aside this argument on the grounds that the ordinance was not invalid on its face and that the City had not actually prevented petitioner from operating. The District Court summarized its holding by saying: "Plaintiff's attorneys state that the ordinance is a specter over plaintiff's head; until the City rattles its chains of interference with interstate commerce, the plaintiff cannot complain" (R. 144).

Respondents' argument seems actually to be that petitioner's argument here on the validity of § 28-6 is more elaborate than in the Courts below. But "Parties are not confined here to the same arguments which were advanced in the courts below upon a Federal question there discussed," *Dewey* v. *Des Moines*, 173 U. S. 193, 198 (1899); *Sanders* v. *United States*, 373 U. S. 1, 16 (1963).

5.

Petitioner has good reason to be apprehensive of interference by the City with its operations, and to take prompt defensive measures.

It must not be overlooked that the City has engaged in intentional and unlawful harassment of petitioner with the avowed purpose of denying petitioner the right to operate in order to force the railroads to employ Parmelee Transportation Co. Petitioner has good reason to be apprehensive of any action by the City that resembles what happened in 1955.

The history of the 1955 ordinance is recounted in *Atchison*, 357 U. S. 77, at 79-81. More details of the events of 1955 are set forth in the opinion of the Court of Appeals

that was affirmed in *Atchison*, 240 F. 2d 930, at 935-936, 939. This opinion, summarizing the undisputed evidence, shows that the 1955 ordinance was prompted by a "communication" from Parmelee to the Public Vehicle License Commissioner which was passed on to the chairman of the local transportation committee of the Chicago City Council. Acting promptly in response to that "communication," the committee, with the active aid of the City corporation counsel's office, devised the 1955 ordinance with the sole purpose of putting petitioner out of business and shackling Parmelee's services to the railroads in perpetuity. Pertinent extracts from the opinion of the Court of Appeals are set forth in Appendix A to this brief. That material, together with this Court's account of the events, is, we submit, convincing evidence of the facts of life in Chicago that justified the institution of the case at bar.

Parmelee, it may be noted, was big business. It was a principal part of the complex of companies which owned and operated most of the taxicabs in Chicago, Pittsburgh, Minneapolis, and other cities. *United States* v. *Yellow Cab Co.*, 332 U. S. 218, at 221-223 (1947).

In the *Atchison* litigation the City played what seemed like a deliberate cat-and-mouse game with petitioner. In the District Court and in the Court of Appeals the City stoutly contended that § 28-31.1, the public convenience and necessity requirement, applied to petitioner. But in this Court the City argued at length that the question of applicability was so uncertain that the case ought to be remanded to the District Court, to be held there while the parties sought adjudication in the Illinois courts to determine whether § 28-31.1 did apply to petitioner. See *Atchison*, 357 U. S. at 84. This Court refused that request.

And in this Court the City, backing away from the adamant position it had maintained under its motion for summary judgment in the two Courts below, sought re-

versal with the representation that it would not apply § 28-31.1 to petitioner as written but would only use it in the lawful exercise of its police power. This Court responded:

> "Although counsel for the City denies that it will use this power to exclude proposed transfer operations wholly or primarily because of economic considerations . . . , it is clear that the City claims at least some power under § 28-31.1 to decide whether a motor carrier may transport passengers from one station to another."

The ink was hardly dry on this Court's mandate in *Atchison* before the City began its course of legislation that led to the case at bar.

CONCLUSION.

In *Atchison* this Court recognized that an ordinance that is invalid on its face, and thereby offers a continuing threat, should be enjoined from enforcement irrespective of the representations of the City that it will not employ the ordinance for unlawful purposes. The same course should be followed here.

The Court should vacate or reverse the judgment of the Court of Appeals and remand the cause to the District Court with instructions to enter a judgment holding that the provision of § 28-6 which requires petitioner to establish that it is "qualified to pursue the occupation of a . . . . coachman," and § 28-30.1, are invalid on their face, in accordance with respondents' concessions. The Court should reverse the judgment of the Court of Appeals holding valid the requirements that petitioner must maintain its principal place of business in Chicago and employ only chauffeurs residing in Chicago.

Respectfully submitted,

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APPENDIX.

Extracts From the Opinion of the Court of Appeals for the 7th Circuit in Atchison, Topeka & Santa Fe Ry. Co. v. City of Chicago, 240 F. 2d 930 (1957).

935

At the meeting of the committe on local transportation of the Chicago city council held on July 21, 1955, the chairman stated that recently he had been advised by the Vehicle License Commissioner that he had received a communication from Parmelee advising that its contract with the railroads was to be canceled out in September of that year, "which would make it appear that the railroads were taking the position of dictating who would or could operate terminal vehicles in Chicago; that he did not think that was right and had prepared an ordinance with the assistance of Mr. Gross, and had it introduced in the city council and referred it to the committee; that subsequently he had discussed said ordinance with Mr. Grossman of the corporation counsel's office and that as a result of his conference with Mr. Grossman, it would appear that, while he was on the right track in the matter, his method of approach was wrong."

Mr. Grossman informed the committee that he had looked over the ordinance "as introduced" by the chairman and was of the opinion that it was not in proper form; but that he believed the objective could be obtained in some other way. He said he would endeavor to prepare and submit an ordinance on this subject.

The chairman's proposed ordinance, which met with Mr. Grossman's objection as to form, and which was laid

aside, in brief would have granted an exclusive franchise for ten years to Parmelee for the operation of terminal vehicles to transfer passengers and their baggage between railroad stations.[12]

On July 26, 1955, the chairman stated that the committee was in session to receive a report from Mr. Grossman who had prepared a substitute ordinance which would accomplish what the committee had in mind, namely, placing the licensing and operation of terminal vehicles under the complete control of the city of Chicago, whereas, as the code then provided, the only one who could secure a license for the operation of a terminal vehicle was someone who had a contract with the railroads.

936

On recommendation of the committee, the council on the same day passed the ordinance now under attack.[13]

939

At meetings of the committee which recommended the 1955 ordinance for passage, the committee chairman made it clear that the objective sought was the assumption by the city of the authority to designate the instrumentality

12. § 2 read: "Subject to all the conditions of this ordinance, exclusive permission and authority is hereby granted to the licensee to operate terminal vehicles in the City for a period of ten (10) years, commencing on * * *, 1955, and ending on * * *, 1965."

§ 4 provided: "It is unlawful for any person to be an operator of one or more terminal vehicles on any public way from place to place within the corporate limits of the city unless such terminal vehicles are licensed by the City as terminal vehicles. * * *"

§ 11 provided: "Upon the effective date of this ordinance, the commissioner shall issue licenses hereunder to licensee in not to exceed the number of licenses held by such licensee on April 1, 1955. * * *"

13. Herein sometimes referred to as the 1955 ordinance.

which was to operate terminal vehicles between railroad stations in Chicago. The proceedings of the committee fail to indicate that the chairman or any member of the committee was interested in traffic regulations or any other aspect of the city's police power.

SUPREME COURT OF THE UNITED STATES

No. 209.—October Term, 1966.

Railroad Transfer Service, Inc., Petitioner, v. The City of Chicago et al. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[March 27, 1967.]

Mr. Justice Black delivered the opinion of the Court.

This case arises from more than a decade of controversy between Railroad Transfer Service, Inc., and the City of Chicago over the city's persistent efforts to regulate Transfer's business, under contract with the railroads, of daily transporting by motor vehicle thousands of interstate railroad passengers between the city's rail terminals. In 1955 the railroads hired Transfer to replace another motor carrier in performing this interterminal transfer service. Bent on blocking this replacement, the city then amended Chapter 28 of its ordinance, which had before been primarily directed at regulating taxicab companies, to require that new companies seeking to perform the transfer service obtain licenses from the city by demonstrating, among other things, their ability to satisfy the public convenience and necessity. Because the city threatened to fine Transfer and arrest its drivers if it operated without a city license for each vehicle, Transfer, without attempting to obtain such licenses, brought suit against the city to challenge the validity of the public-convenience-and-necessity section of the ordinance. In *City of Chicago* v. *Atchison*, 357 U. S. 77, rejecting the city's argument that the challenge was premature, we held that section "completely invalid insofar as it applies to Transfer . . . ." *Id.*, at 89.

In 1959, after our decision in *Atchison*, the city repealed the invalid section, added some new provisions, and

amended or left unchanged others which clearly applied to Transfer but were not specifically dealt with in our *Atchison* opinion. The amended ordinance, still making it unlawful for Transfer to operate without obtaining licenses from the city,[1] provides that an applicant for a license must, among other things:[2] pay a license fee,[3] hire only Chicago residents as its drivers,[4] maintain its principal place of business in Chicago,[5] and file a detailed written application.[6] Upon receipt of an application, the

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[1] § 28–2.

[2] No vehicle may be licensed until it has been inspected by the city and found to be "in safe operating condition and to have adequate . . . facilities which are clean and in good repair for the comfort and convenience of passengers" (§ 28–4), unless it has at least two doors on each side (§ 28–4.1), and unless the licensee has a specified amount of public liability, property damage, and workmen's compensation insurance evidenced by policies filed with the city (§ 28–12). The validity of these provisions is not specifically challenged by Transfer.

[3] Section 28–7 imposes an annual fee of $40 for each terminal vehicle, clearly defined in § 28–1 (p) to include Transfer's vehicles, and provides that such fee "shall be applied to the cost of issuing such license, including, without being limited to, the investigations, inspections and supervision necessary therefor, and to the cost of regulating all operations of public passenger vehicles . . . ."

[4] Provisions of Chapter 28 requires that drivers be public chauffeurs licensed by the city, §§ 28–1 (*l*), 28–9, and Chapter 28.1 makes residence in the city a condition to being licensed as a chauffeur.

[5] Section 28–5.1, added for the first time in 1959.

[6] Section 28–5, describing the information to be contained in the application, was amended in 1959 to provide:

"If the applicant is affiliated or to become affiliated or identified with any person [defined elsewhere to include a corporation] by . . . service agreement, the application shall contain the full name, Chicago business address and telephone number of said affiliate, and a copy of the agreement with said affiliate, if any, shall be filed with the application."

Since Transfer operates under a service contract with the railroads, it is conceivable that the railroads might be considered affiliates of

city must investigate the applicant's "character and reputation as a law-abiding citizen" and his "financial ability" to render "safe and comfortable" service, to replace and maintain equipment, and to pay all judgments arising out of vehicle operation. If the city finds that the applicant is "qualified" and that the vehicle for which the license is sought is in "safe and proper condition," the amended ordinance requires the city to issue the license.[7] Licenses are valid for only one year, and under the amended ordinance a licensee must annually go through this detailed application procedure. Outstanding licenses are revocable on a number of grounds at the city's discre-

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Transfer. However, it is clear that the provisions of the ordinance requiring an affiliate to maintain its principal place of business in Chicago, to register with the Commissioner, to carry certain insurance, and to comply with all provisions of the ordinance and rules issued by the Commissioner, §§ 28–5.1, 28–12.1, 28–13.1, cannot be validly applied to the railroads, and the city does not now suggest that they can.

[7] § 28–6:

"Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. *If the commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed, and that the applicant is qualified to pursue the occupation of a cabman or coachman* [defined in § 28–1 (m) to include the proprietor of a terminal vehicle], *the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued.*" The italicized sentence was added in 1959.

tion.[8] Finally, the ordinance provides a fine of up to $100 for each violation of any of its provisions and specifies that each day such violation continues shall be deemed a separate offense.[9]

With the ordinance thus amended, the city in 1960 demanded that Transfer apply for licenses. Transfer did so, after unsuccessfully attempting to pay the license fees under protest, and then brought this present lawsuit against the city, asking the District Court to declare the above-mentioned provisions of the ordinance invalid as unconstitutional burdens on interstate commerce and as unconstitutional attempts to regulate in an area preempted by the Interstate Commerce Act, 49 U. S. C. § 1 *et seq.* While the case was pending, the city again demanded that Transfer cease and desist operations unless it "fully complied" with the ordinance [10] and again amended its ordinance to impose new requirements on Transfer such as filing detailed financial reports and

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[8] Prior to 1963 a license was subject to discretionary revocation only if it was obtained by an application in which a material fact was omitted or stated falsely. § 28–15.1. This section was amended in 1963 to authorize revocation also where a licensee fails "to carry out any representation made to the Commissioner before the issuance of such license," and to make clear that revocation under this section may extend to *all* licenses held by a person who obtains any single license by misrepresentation.

Under § 28–14, the city's vehicle commissioner may suspend a license at any time that a vehicle becomes "unsafe for operation or . . . unfit for public use," and "[i]n determining whether any . . . vehicle is unfit for public use the commissioner shall give consideration to its effect on the health, comfort and convenience of passengers and its public appearance on the streets of the city."

[9] § 28–32.

[10] The city also ordered Transfer's drivers to submit to medical examinations and fingerprinting.

opening its books and records for city inspection.[11] Nevertheless, the District Court dismissed Transfer's action as premature. Because Transfer had continued to operate by paying its license fees into court and because the city had taken no further action to enforce its ordinance, the Court of Appeals affirmed, holding Transfer's complaint premature and the ordinance valid on its face. 358 F. 2d 55. We granted certiorari to consider these two holdings and conclude that the action is not premature and that the ordinance is invalid.

First. The prematurity arguments which the city makes here are similar to the ones it made and we rejected in *Atchison.* Though the city argues that some

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[11] § 28–30.1:

"Every cabman, *corporation* and affiliate shall keep and provide accurate books and records of account of his operations at his place of business in the city. On or before May 1 of each year, every cabman, *corporation* and affiliate shall file with the Commissioner a profit and loss statement for the preceding calendar year, showing all his earnings and expenditures for operation, maintenance and repair of property, depreciation expense, premium paid for workmen's compensation and public liability insurance, and taxes paid for unemployment insurance and social security, and all state and local license fees, property taxes and Federal income taxes, and a balance sheet taken at the close of said year.

"The Commissioner . . . shall have access to the property, books, contracts, accounts and records during normal business hours at said place of business, for such information as may be required for the effective administration and enforcement of the provisions of this chapter . . . .

"In addition to the foregoing reports, each cabman shall within thirty days after the six months' period ended December 31 and within thirty days after the six months' period ended June 30 of each year file a sworn statement with the Commissioner showing his gross fares collected and his operating expenses for the six months immediately preceding said dates."

The italicized provisions were added in 1963. As first enacted in 1959, the section was applicable only to taxicab companies.

of the challenged provisions of the ordinance do not apply to Transfer,[12] the Court of Appeals clearly considered them applicable. Though the city argues that it does not retain as much power to deny Transfer a license as Transfer fears,[13] it is clear that "the City claims *at least some power* . . . to decide whether a motor carrier may transport passengers from one station to another." 357 U. S., at 85 (emphasis added). That was enough in *Atchison* to enable Transfer to attack the public-convenience-and-necessity requirement, even though the city there disclaimed any power to deny a license because of economic considerations. It is enough here. It is difficult to imagine a controversy more actual, alive, and ripe than this one. It has lasted for more than a decade. Though Transfer obtained its 1960 licenses after it filed this lawsuit to challenge the ordinance, it has continued to operate only by paying the license fees into court. The city has continually—and even while this case was pending—amended its ordinance to regulate Transfer further and has continually demanded that Transfer fully comply with the ordinance. Though the city now disclaims any power to "stop" Transfer's operations, it does not give up its power under the ordinance to fine Transfer and arrest its drivers for operating without licenses or its power to revoke for discretionary reasons all licenses

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[12] For instance, the city argues that § 28–30.1 does not apply to Transfer. But, as the Court of Appeals apparently recognized, the 1963 amendments of this section make its first two paragraphs applicable to Transfer. See note 11, *supra*.

[13] The city argues that its commissioner may only consider the so-called "safety factors" specifically enumerated in § 28–6 in determining whether Transfer is "qualified" to perform the international service. See note 7, *supra*. Transfer, perhaps understandably, is afraid that the word "qualified" gives the commissioner unlimited discretion to consider the very same nonsafety factors that he previously could consider under the invalid public-conveniency-and-necessity provision.

which Transfer may obtain.[14] In short, although Transfer continues to operate, it is only at the city's reluctant sufferance.[15] If the ordinance is invalid insofar as it applies to Transfer, then, as we said in *Atchison*, "that company was not obligated to apply for a . . . [license] and submit to the administrative procedures incident thereto before bringing this action." 357 U. S., at 89.

Second. The rationale of *Atchison* compels our holding that the provisions of the ordinance now challenged by Transfer cannot be validly applied to it. In *Atchison*, recognizing that Transfer's "service is an integral part of interstate railroad transportation authorized and subject to regulation under the Interstate Commerce Act," *id.*, at 89, we pointed to various provisions of the Act[16]

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[14] At the same time the city was assuring the District Court that its threat to stop Transfer was an "idle" one, it was adding a new provision to the ordinance which seems custom-tailored to make Transfer's already precarious position more precarious. Section 28–31.2, added in 1963, provides:

"No license which has been revoked, surrendered, cancelled or not applied for within a period of seven months after such license application is due, shall hereafter be issued."

[15] The city argues that Transfer cannot challenge the principal-place-of-business requirement because Transfer now has its principal, and only, place of business in Chicago. The provision quoted in note 14, *supra*, makes it clear that neither Transfer, which might want to change it place of business, nor the railroads, which might want to hire another transfer agent or perform the service themselves, can afford to make any change prior to challenging the place-of-business requirement. Under § 28–15, "[i]f any licensee abandons his . . . place of business in the city . . . all his licenses shall be revoked." After such revocation, no new licenses may be issued.

[16] In particular, we mentioned 49 U. S. C. §§ 1 (4) and 3 (4) requiring the railroads to provide reasonable and proper facilities for the transfer of passengers between terminals, § 15 (3) giving the Interstate Commerce Commission power to establish such service, and § 302 (c) (2) providing that the interterminal service conducted by any motor carrier under contract with a railroad shall be regarded

which in our view completely precluded the city "from exercising *any veto power* over such transfer service," *id.*, at 85 (emphasis added). The Act, as we said in *Atchison*, gives the railroads, not the city, the "discretion to determine who may transfer interstate passengers and baggage between railroad terminals." *Id.*, at 84–85. That power, that discretion, is precisely what the comprehensive licensing scheme of the amended ordinance purports to reserve to the city. It matters not that the city no longer seeks to exercise that power by requiring a showing of public convenience and necessity. The total effect of the current ordinance on Transfer's operations and the burdens it places on interstate commerce are the same. As we recognized in *Atchison*, the city retains authority to insist that Transfer obey "general safety regulations" such as traffic signals and speed limits. *Id.*, at 88. Many of the provisions of the current ordinance, such as the requirements that Transfer maintain its principal place of business in Chicago, have its drivers reside in Chicago, file annually the most detailed financial reports, and open its books and records for city inspection, bear no resemblance to general safety regulations such as traffic signals and speed limits. Other provisions, if stand-

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as transportation performed by the railroad and shall be subject to the same comprehensive scheme of regulation which applies to such transportation. Furthermore, under a proviso to § 302 (c), the ICC retains power to treat interterminal service as motor carrier service under § 304 for the purpose of regulating "qualifications and maximum hours of service of employees and safety of operation and equipment."

Although, at the time we decided *Atchison*, the ICC had not adopted any special regulations for interterminal transfer service, we there noted that it could do so at any time under the Act, *id.*, at 86–87, and since then, the ICC has, indeed, promulgated under § 304 certain safety regulations which are specifically applicable to motor carriers engaged in such service. See generally 49 CFR §§ 190.1 *et seq.*

ing alone and enforced by means other than this particular licensing program, might possibly be justified as safety regulations.[17] *Castle* v. *Hayes Freight Lines, Inc.*, 348 U. S. 61. But we need not decide that question now, for here each of these provisions is an integral part of, and cannot be divorced from, the comprehensive licensing scheme that the city seeks to impose as a whole on Transfer. See *Adams Express Co.* v. *New York*, 232 U. S. 14. Here the city seeks to enforce each and all of these related requirements by denial of a license for noncompliance and then criminal sanctions for operation without a license. This is the "veto power" which *Atchison* held the city may not exercise.

Reversed.

MR. JUSTICE HARLAN would affirm the judgment below substantially for the reasons given in the opinion of Chief Judge Hastings for the Court of Appeals, 358 F. 2d 55.

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[17] In *Atchison* we noted that the city retains authority to "exact reasonable fees for . . . use of the local streets." *Id.*, at 88. The license fees exacted here, however, were for the purpose of enforcing this invalid licensing scheme. See note 3, *supra*. Transfer cannot be compelled to pay them.